DOCUMENT RESUME

ED 153 335 EA 010 521

AUTHOR Najita, Joyce M.
TITLE Guide to Statutory Provisions in Public Sector Collective Bargaining. Unit Determination. Third Issue.
INSTITUTION Hawaii Univ., Honolulu. Industrial Relations Center.
PUB DATE Apr 77
NOTE 117p.
AVAILABLE FROM Industrial Relations Center, University of Hawaii, 2404 Maile Way, Honolulu, Hawaii 96822 ($3.00)

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS *Collective Bargaining; *Government Employees; *Labor Legislation; Local Government; State Government; *State Legislation; Teachers

ABSTRACT

This is one of a series of guides being prepared to serve as a reference tool in locating statutory and other provisions (not including attorney general opinions and court decisions) related to selected topics in public sector collective bargaining. Each guide contains a summary and analysis of the provisions found in nearly 90 laws, municipal ordinances, and personnel rules and regulations, and a Legal Provision Finder containing the language of the provisions and a reference to the section of the law where such provisions may be located. A table in an appendix presents an array of the laws adopted in the states up to July, 1976, and the classes of employees covered under these laws. Thirty-nine states and the District of Columbia have adopted some form of legislation covering one or several classes of public employees. Of the 86 state statutes, municipal ordinances, and personnel regulations reviewed, 72 of the authorizations were found to contain some measure regarding the determination of appropriate units. (Author/IRT)

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM"

GUIDE TO STATUTORY PROVISIONS IN PUBLIC SECTOR COLLECTIVE BARGAINING

UNIT DETERMINATION

Third Issue

INDUSTRIAL RELATIONS CENTER
COLLEGE OF BUSINESS ADMINISTRATION

EA 010 521

by Joyce M. Najita

UNIVERSITY OF HAWAII

Fujio Matsuda, President

University of Hawaii at Manoa

Douglas S. Yamamura, Chancellor

College of Business Administration

David A. Heenan, Dean

Industrial Relations Center

John B. Ferguson, Director

Edwin C. Pendleton, Research Associate Emeritus
Helene S. Tanimoto, Junior Researcher
Joyce M. Najita, Associate Researcher
Eva L. Goo, Secretary
Nancy T. Shirashi, Account Clerk

The Industrial Relations Center was established by the Board of Regents of the University of Hawaii in January, 1948. The objectives of the Center are set forth in the following excerpts from the minutes of the Board.

Principles

To promote in the community a sound understanding of labor management problems, labor management techniques and policies; and to provide for labor, management, and the community sources of information in the field of industrial relations, through such mediums as:

1. A curriculum for the training of young men for industrial relations positions; credit courses for University students and non-credit courses for the general public to bring about a better understanding of the problems of management and labor consistent with the basic needs of the community.

2. A library devoted to maintaining current materials and information in the field of labor-management relations, as well as the basic and standard sources, to be available for use by labor, management, and the general public. It is proposed that this library will contain all the important services now available, such as the publications of the Bureau of National Affairs, Prentice Hall, and Commerce Clearing House. It would also be desirable to maintain files of collective bargaining agreements, both state and mainland agreements, and arbitration awards, as well as standard texts in the major fields of industrial relations.

3. A library reference service for the purpose of making this information available to both labor and management.

4. Public lectures, conferences, and discussion groups.

5. Research studies in basic industrial relations problems.

Further information concerning the work of the Industrial Relations Center may be obtained by calling the Center, Phone 948-8132 or 948-8165.

GUIDE TO STATUTORY PROVISIONS IN PUBLIC SECTOR COLLECTIVE BARGAINING

Unit Determination

by Joyce M. Najita
with the assistance of Norris N. Kami

Industrial Relations Center
College of Business Administration
UNIVERSITY OF HAWAII
April 1977

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SPECIAL NOTES TO THE USER

This Guide is one of a series being prepared to serve as a reference tool in locating statutory and other provisions (not including attorney general opinions and court decisions issued) related to selected topics in the area of public sector collective bargaining. Each part of the series contains (1) a summary and analysis of the provisions found in nearly 90 laws, municipal ordinances, and personnel rules and regulations, and (2) a Legal Provision Finder containing the language of the provisions and a reference to the section of the law where such provisions may be located. The Guide attempts to highlight general movements, if any, in provisions incorporated in the highly varied and numerous state and local government laws and, at the same time, provide some of the detailed language contained in these laws. Of course, it should be emphasized that these provisions should also be viewed in the context of the complete law, and we recommend that the user exercise this option.

The Legal Provision Finder is organized along a Master Outline as presented on page 15. Following the Master Outline, the pages are arranged according to state, beginning with Alaska and ending with Wyoming and the special case of the District of Columbia. Where a state does not have a statute authorizing collective bargaining or meeting and conferring among public employees, it has been omitted from the Finder.

The reader's attention is directed to Table A which presents an array of the laws adopted in the states up to July 1976, and the classes of employees covered under these laws. It is to be noted that 39 states and the District of Columbia have adopted some form of legislation covering one or several classes of public employees. State employees are covered under 28 laws, local government employees under 41 laws, firefighters under 42 laws, policemen under 35 laws, and teachers under 30 laws. Table A also serves to identify the laws of states having more than one law (e.g., Alaska 1 and Alaska 2) with convenient designations for use in the tables which follow it in the appendix.

Note to the Third Issue: This third issue of the Guide on Unit Determination incorporates the recent amendments to a handful of laws. It also introduces a number of new pieces of state and local legislation (enacted since December 1973), including those of California, Connecticut, Indiana, Iowa, Maine, Maryland, Rhode Island and Utah.

I. ANALYSIS AND SUMMARY

Highlights

Of the 86 state statutes, municipal ordinances, and personnel regulations reviewed, about 84 percent (or 72)[1] of the authorizations were found to contain some measure regarding the determination of appropriate units. These provisions ranged from mere indirect references to school district units and police and fire department units, in those laws covering only teachers, policemen or firefighters, respectively, to the more specific provisions in the comprehensive laws covering state and/or local government employees, two of which go so far as to mandate statewide statutory bargaining units.

Under most laws certain administrative agencies--usually state labor relations boards or public employment relations boards--are authorized to determine appropriate units, and these agencies are customarily provided with unit determination criteria. Limitations also may be set forth usually requiring separate units for professional, supervisory, and other special classes of employees such as policemen and firefighters.

The Appropriate Bargaining Unit

Private Sector

In the private sector, the National Labor Relations Act (NLRA) authorizes the National Labor Relations Board (NLRB) to determine the appropriate bargaining unit and sets forth certain limitations applying to units of professional employees, craft employees and guards as follows:

> Section 9. (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided,* That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for

[1] Statutes which were silent with respect to unit determination covered, in the main, special groups of employees (predominantly firefighters and/or policemen).

> inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

Aside from Section 9(c)(5), which stipulates that the extent to which employees have organized shall not be the controlling factor in unit determination, the NLRA provides no unit determination guidelines. As one commentator has stated, "The National Labor Relations Act, whether by design or by oversight, contains few standards which the NLRB may utilize in determining the appropriate bargaining unit. The provisos of section 9(b) covering professional employees, craftsmen and guards provide little help in most unit cases. Consequently, the Board, in order to promote consistency, has developed certain 'factors' to be applied in determining the appropriate bargaining unit."[2]

Federal Service

In the federal service, Executive Order 11491 issued in 1969 (superseding E.O. 10988) authorizes the Assistant Secretary of Labor for Labor-Management Relations to decide questions concerning the appropriate unit, and, like the NLRA, sets limitations on units of professional employees and guards. However, unlike the NLRA, the Order specifically sets forth two standards to be applied in the determination of a unit. Sections 10(b) and (c) of E.O. 11491 read in part:

> (b) A unit may be established on a plant or installation, craft, functional, or other basis *which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations.* [Emphasis supplied.] A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes–
>
> (1) any management official or supervisor, except as provided in section 24;
>
> (2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

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[2]These "factors" include (1) community of interest, (2) geographical and physical proximity, (3) employer's administrative divisions, (4) functional integration of the employer's operations, (5) interchange of employees among various work locations, (6) history of collective bargaining, (7) desire of the employees, and (8) extent of organization. John E. Abodeely, *The NLRB and the Appropriate Bargaining Unit* (Philadelphia: University of Pennsylvania, Industrial Research Unit, Wharton School of Finance and Commerce, 1971, Labor Relations and Public Policy Series Report No. 3), pp. 7-86.

(3) any guard together with other employees; or [Revoked]

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

Questions as to the appropriate unit and related issues may be referred to the Assistant Secretary for decision.

(c) An agency shall not accord exclusive recognition to a labor organization as the representative of employees in a unit of guards if the organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. [Revoked]

State and Local Government

Appropriate Unit. Provisions directly related to the determination of appropriate units were found in 35 general authorizations[3] covering state and/or local government employees, in nine laws dealing with specific local jurisdictions,[4] in six teacher statutes,[5] in 12 statutes covering only police and/or firefighters,[6] and in five others.[7]

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[3]See Alaska Public Employment Relations Act (PERA), California Meyers-Milias-Brown Act (MMBA), California state government employees law, Connecticut Municipal Employee Relations Act (MERA), Connecticut state employees law, Delaware state and local government employees law, Florida state and local government employees law, Hawaii Public Employment Relations Act (PERA), Indiana state and local government employees law, Iowa Public Employment Relations Act (PERA), Kansas state and local government employees law, Maine Municipal Public Employees Labor Relations Act (MPELRA), Maine State Employees Labor Relations Act (SELRA), Massachusetts state and local government employees law, Michigan Public Employment Relations Act (PERA), Minnesota Public Employment Labor Relations Act (PELRA), Missouri state and local government employees and firefighters law, Montana state and local government employees law, Nebraska state and local government employees law, Nevada Local Government Employee-Management Relations Act (LGEMRA), New Hampshire state government employees law, New Jersey Employer-Employee Relations Act (EERA), New Mexico State Personnel Board regulations, New York Taylor Law, Oklahoma Firefighters' and Policemen's Arbitration Law (FPAL) (also covers municipal employees), Oregon state and local government employees, firefighters and policemen law, Pennsylvania Public Employee Relations Act (PERA), Rhode Island state government employees law, Rhode Island Municipal Employees' Arbitration Act (MEAA), South Dakota state and local government employees and teachers law, Vermont State Employee Labor Relations Act (SELRA), Vermont Municipal Employee Relations Act (MERA), Washington Public Employees Collective Bargaining Act (PECBA), Wisconsin State Employment Labor Relations Act (SELRA), and Wisconsin Municipal Employment Relations Act (MERA).

[4]See Los Angeles city ordinance, Los Angeles County Employee Relations Ordinance (ERO), San Francisco City and County Employee Relations Ordinance (ERO), Baltimore City Municipal Labor Relations Ordinance (MLRO), Prince George's County (Maryland) ordinance, New York City Collective Bargaining Law (CBL), Portland city ordinance, Eugene city ordinance, and District of Columbia personnel regulations.

[5]See California Public Educational Employer-Employee Relations Act (PEEERA); Indiana, Kansas, Maryland and North Dakota teachers laws; and Washington Educational Employment Relations Act (EERA).

[6]See Kentucky and Texas police and/or firefighters laws.

[7]See Maryland non-certified public school employees law, University of Maine Labor Relations Act (LRA), Montana nurses law, and Washington laws covering community college academic employees and state university system classified personnel.

Over three-fourths (or 28) of the laws covering state and/or local government employees contain provisions covering the authority of administrative agencies in the determination of appropriate bargaining units. In nine of these laws, previously established labor relations boards or commissions are granted authority in unit determination matters.[8] Newly created public employment relations agencies are granted the authority in 13 other laws.[9] In other cases, units are determined by the Department of Labor,[10] the state personnel board,[11] the board of personnel appeals,[12] the State Board of Mediation,[13] and the Labor Commissioner or any person designated by him.[14] Still other variations were found in five laws.[15]

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[8] See Connecticut MERA, Connecticut state employees law, Michigan PERA, Pennsylvania PERA, Rhode Island state government employees law, Rhode Island MEAA, Vermont MERA, Wisconsin MERA. Under the Nebraska state and local government employees law, the previously established Court of Industrial Relations (composed of five judges) determines the appropriate unit. The bargaining unit provisions of the Wisconsin SELRA are discussed separately elsewhere.

[9] See Florida state and local government employees law, Indiana teachers law, Indiana state and local government employees law, Iowa PERA, Kansas state and local government employees law, Maine MPELRA, Montana state and local government employees law, New Hampshire state government employees law, New Jersey EERA, New York Taylor Law, Oklahoma FPAL, Oregon state and local government employees law, Vermont SELRA. The bargaining unit provisions of the Hawaii PERA are discussed separately elsewhere. In Maine SELRA the appropriate unit is determined by the Maine Labor Relations Board, as in Maine MPELRA.

[10] See Alaska PERA (for public employees other than state employees), Delaware state and local government employees law, and Washington PECBA.

[11] See Alaska PERA (for state government employees).

[12] See Montana state and local government employees law.

[13] See Missouri state and local government employees and firefighters law.

[14] See South Dakota state and local government employees and teachers law.

[15] Under the Minnesota PELRA, the Director of the Bureau of Mediation Services determines appropriate units, and appeals from the determinations of the Director are heard and decided by the PERB.

Disputes on the appropriateness of a unit of representation may be resolved through mediation or recommendations of the Division of Conciliation under the California Meyers-Milias-Brown Act.

The Massachusetts state and local government employees law authorizes the labor relations commission to prescribe rules and regulations and establish procedures for the determination of appropriate units.

The appropriate unit or units for negotiating purposes are determined by each local government employer, after consultation with employee organizations recognized by the employer, under the Nevada LGEMRA. Appeals on employer determinations are made to the local government employee-management relations board.

Recommendations of agency management on the "most appropriate unit" are approved, rejected or modified by the State Personnel Board under the New Mexico State Personnel Board regulations.

Like the NLRA, one-fifth (or seven) of the laws covering state and/or local government employees specifically authorize the administering agency to designate the appropriate unit "in each case."[16] Other laws set certain conditions upon the agency's taking action in unit determination matters.[17]

Only two of the 35 authorizations covering state and/or local government employees mandate statewide bargaining units. The Wisconsin SELRA establishes single statewide units for 14 occupational groups in the state classified service. The Hawaii law covering both state and local government employees establishes 13 statewide units with units 9 through 13 designated as "optional units." The Wisconsin Employment Relations Commission is authorized to assign eligible employees to the appropriate statutory units as is the Hawaii Public Employment Relations Board under the Hawaii law; both laws do not appear to grant the administering agency the power to create additional units.

The University of Maine Labor Relations Act covering university employees establishes bargaining units "structured on a university system-wide basis with one unit for each of the following occupational groups:

A. Faculty;
B. Professional and administrative staff;
C. Clerical, office, laboratory and technical;
D. Service and maintenance;
E. Supervisory classified; and
F. Police."

In the event of a dispute over the assignment of jobs or positions to a unit, the executive director of the Maine Labor Relations Board is required to examine "the community of interest, including work tasks among other factors, and make an assignment to the appropriate statutory bargaining unit" set forth in the law.

The law also provides for the employer or employee organizations to petition the executive director for the establishment of additional or modified university

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[16] See Alaska PERA, Connecticut MERA, Delaware state and local government employees law, Indiana teachers law, Michigan PERA, Vermont SELRA, Washington PECBA.

[17] Provisions authorizing action by the administering agency in cases of dispute or when questions or issues concerning the unit are raised, are incorporated in the California Meyers-Milias-Brown Act, Kansas state and local government employees law, Maine MPELRA and SELRA, Missouri state and local government employees and firefighters law, New Jersey EERA, New York Taylor Law, Oklahoma FPAL, South Dakota state and local government employees and teachers law.

In addition, the California Meyers-Milias-Brown Act, Iowa PERA, New Hampshire state government employees law, Oregon state and local government employees, firefighters and policemen law, South Dakota state and local government employees and teachers law, and Vermont MERA provide that the administering agency shall take action upon request of the parties or upon application or petition.

system-wide units. The executive director is authorized to determine the appropriateness of such petitions, taking into consideration the community of interest and the declared legislative intent to avoid fragmentation whenever possible and to insure employees the fullest freedom in exercising the rights guaranteed by the law.

Variations were also noted in nine laws applying to specific local jurisdictions. In five cases[18] an employment relations board or commission determines employee representation units. In the case of Baltimore City the Labor Commissioner, a permanent member of the employer's negotiating team, defines appropriate units, subject to final determination by an ad hoc impartial three-man board in the event the parties involved fail to agree on "any aspect of the question concerning representation." Under the Portland ordinance, if a petition for recognition purposes a bargaining unit not previously recognized by the city council or designated by the State Board, the council first shall consider whether the proposed bargaining unit is appropriate. The council may either recognize the proposed unit or transmit the matter for determination to the State Board, which includes the Oregon Bureau of Labor, the Commissioner of Labor, the Public Employee Relations Board, the State Conciliation Service, and any ad hoc committee of persons appointed by the Commissioner of Labor or the Public Employee Relations Board who are knowledgeable in labor relations. In the case of the District of Columbia, the Personnel Officer determines the appropriate unit in undisputed cases, and the Board of Labor Relations--an impartial agency--in disputed cases.

The one remaining law pertaining to a particular local jurisdiction, the San Francisco City and County ERO, outlines representation units much like the previously discussed Wisconsin SELRA and Hawaii PERA. This ordinance establishes 11 broad representation units, but it also includes provision for the separate representation of certain building trades and other craft employees (designated as Unit 1) and of professional employees (designated as Unit 8), thereby permitting the creation of additional units. The ordinance also stipulates that should an employee or employee organization disagree with their inclusion in a particular unit, they may submit their protest to the Municipal Employee Relations Panel, the impartial body authorized to make the final determination in the matter.

Less than one-half (or six) of the 14 statutes covering only teachers clearly set forth provisions relating to unit determination. Three laws provide for determination of units by the employer or State Board of Education;[19] one permits the employer to determine the unit in "negotiations" with the employee organization requesting negotiation;[20] another permits the school employer and employee representative to

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[18]See Los Angeles city ordinance, Los Angeles County ERO, Prince George's County ordinance, New York City CBL and Eugene city ordinance.

[19]See California PEERA, Kansas and North Dakota teachers law.

[20]See Maryland teachers law.

agree on the appropriate unit, but if no such agreement is reached or if any employee in the proposed unit files a complaint, the education employment relations board is authorized to determine the proper unit;[21] and one provides for the determination of units by the commission.[22]

Most of the teacher statutes do not contain detailed provisions on the unit question and only imply that school districts are considered appropriate units.[23]

Similarly, one-fifth (or two) of the statutes covering only police and/or firefighters contain clearcut provisions regarding unit determination. One law authorizes the state labor relations board to determine the appropriate unit,[24] and another law indicates clearly that fire and police departments within the same city, town or other political subdivision shall constitute separate bargaining units.[25] Beyond these, the statutes merely imply a fire or police department to be an appropriate unit.[26] Four statutes[27] have no provisions directly or indirectly related to unit determination.

Aside from mention of unit determination criterion, "desire of the employees," a number of laws provide for secret ballot elections to determine the desires of the employees regarding certain unit questions.[28]

Criteria. Unit determination criteria[29] are set forth in over 80 percent (or 29) of the 35 general authorizations covering state and/or local government employees, and in eight of the nine laws covering specific local jurisdictions. On the average, the laws list four or five criteria, ranging from passing mention of a single criterion--such

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[21] See Indiana teachers law.

[22] See Washington EERA.

[23] See Alaska, Connecticut, Delaware, Idaho, Nebraska, Oklahoma, Vermont and Washington teacher statutes. In addition, the Rhode Island School Teachers' Arbitration Act (STAA) refers to the public school system in any city, town, or regional school district.

[24] See Kentucky Fire Fighters Collective Bargaining Act (FFCBA).

[25] See Texas Fire and Police Employee Relations Act (FPERA).

[26] See Georgia, Idaho, Rhode Island and Wyoming laws.

[27] Alabama firefighters law, California firefighters law, Kentucky policemen law, and Pennsylvania policemen and firefighters law.

[28] See San Francisco City and County ERO (in the case of Unit 1 craft employees), Hawaii PERA (in the case of optional units 9 through 13), Portland city ordinance, Vermont SELRA, Vermont MERA, Washington EERA (regarding exclusion of principals and assistant principals), Washington community college academic employees law (regarding inclusion of college administrators), Wisconsin SELRA and Wisconsin MERA.

[29] Provisions related to the establishment of separate units (e.g., professional vs. nonprofessional employees, supervisory vs. non-supervisory employees) will be discussed under a separate heading.

as "clear and identifiable community of interest"[30] or the avoidance of fragmentation of units[31] – to a full listing of nine or ten criteria.[32]

"Community of interest" is by far the most frequently mentioned criterion, appearing in over three-fourths (or 27) of the general laws containing unit determination criteria (see Table 1); however, the definitions of the term were not always consistent among the laws. Although the majority of the laws simply cite "community of interest" as one criterion among many, at least three laws attempt to distinguish the various facets of the term. The Baltimore City MLRO, for example, mentions community of interest as including similarity of job duties, skills, wages, educational requirements, supervision, hours of work, job location and working conditions. The District of Columbia Personnel Manual mentions community of interest as "the essential ingredient in every unit" and appears to define it by requiring that "a unit should include individuals who share certain interests, such as skills, working conditions, common supervision, physical location, organizational structure, distinctiveness of functions performed, and the existence of integrated work processes."[33] Under the Florida state and local government employees law the commission is required to take into consideration community of interest, "considering:

1. The manner in which wages and other terms of employment are determined;
2. The method by which jobs and salary classifications are determined;
3. Interdependence of jobs and interchange of employees;
4. Desires of the employees; and
5. The history of employee relations within the organization of the public employer concerning organization and negotiation."

Under the New Hampshire state government employees law, community of interest is termed to be exhibited by one or more of the following criteria, although it is not limited to such: (a) Employees with the same conditions of employment; (b) Employees with a history of workable and acceptable collective negotiations; (c) Employees in the same historic craft or profession; (d) Employees functioning within the same organizational unit. The law further provides that "in no case shall

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[30] See Connecticut MERA, Maine MPELRA, Missouri state and local government employees and firefighters law, Nevada LGEMRA, and New Jersey EERA.

[31] See Wisconsin MERA.

[32] The District of Columbia personnel regulations, the Baltimore City MLRO, the Los Angeles city ordinance, and the Montana state and local government employees law each cite nine or ten criteria (See Table 1). See also Florida state and local government employees law.

[33] It also is to be noted that among the other factors (other than community of interests, per se) commonly cited are definitions of the community of interest factor such as similar working conditions, similar skills, similar job duties, and common supervision, which have been applied by the NLRB in determining the existence of a community of interest.

the board certify a bargaining unit of less than 10 employees with the same community of interest."

Other criteria commonly cited are: similar working conditions, desire of the employees, principles of efficient administration of government, history of collective bargaining, effects of over-fragmentation, similar skills, geographical location, hours, extent of organization,[34] similar job duties, and wages. Common supervision, sound or effective labor relations, educational requirements, and the recommendations of the parties involved are less frequently cited (see Table 1).

In addition, "the principles and the coverage of uniform comprehensive position classification and compensation plans" are set forth as criteria in two laws[35] in almost identical language, and similarly, two California ordinances[36] cite as a criterion "the effect on the existing classification structure of dividing a single classification among two or more units." The Baltimore City MLRO states: "A unit which consists of a majority of employees in a civil service job classification or group of related civil service job classifications shall be deemed prima facie an appropriate unit." In a special case, the Hawaii law, which mandates statewide units, mentions compensation plans for blue collar and white collar positions, salary schedules for teachers and educational officers, and the appointment and classification of faculty as bases for differentiating blue collar from white collar employees, professional from nonprofessional employees, supervisory from nonsupervisory employees, teachers from educational officers and faculty from nonfaculty.

The remaining criteria cited more than once are: administrative level of authority;[37] extent of integration of work functions;[38] and the compatibility of the unit with joint responsibilities of the employer and the employees to serve the public.[39]

In the case of legislation covering only special groups of employees (primarily teachers, policemen and firefighters), most of the laws that do provide for a unit determination process incorporate the same common criteria found in the general

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[34] As under the NLRA, a few laws specifically provide that the extent of organization shall not be controlling. See Vermont SELRA, Vermont MERA and the District of Columbia personnel regulations.

[35] See Minnesota PELRA and the South Dakota state and local government employees and teachers law.

[36] See the Los Angeles city ordinance and the Los Angeles County ERO.

[37] See Los Angeles County ERO, Florida state and local government employees law, Minnesota PELRA, New York Taylor Law, South Dakota state and local government employees and teachers law, and Vermont SELRA.

[38] See Montana state and local government employees law and the District of Columbia personnel regulations.

[39] Almost identical language is incorporated in the Florida state and local government employees law, Baltimore City MLRO and New York Taylor Law.

public employees laws, except that none of the special laws include common supervision and sound labor relations as criteria (see Table 1 for details)

Employees Excluded from Coverage of Law All except four of the 35 general authorizations covering state and/or local government employees and two of the nine laws dealing with specific local jurisdictions were found to contain provisions excluding certain employees from coverage of the law and hence from representation units[40] The range of employees excluded under any one law extended from no exclusions[41] or a single class of employees excluded, as in the Nevada LGEMPA, to the extensive and specific list of exclusions found in the Vermont SELRA A tally of excluded employees among these laws reveals that elected officials and confidental employees are the two most frequently excluded classes of public employees Elected officials are excluded from coverage in 26 of these laws and confidential employees in 24 In close succession, managerial employees are excluded under some laws, as are appointed officials, supervisory employees, board and commission members, and part-time employees (see Table 2) In a few cases, department heads and administrative officials; personnel workers other than clerical; legislative employees; judicial or court employees; commissioned or enlisted personnel in the National Guard; and employees of employment relations boards or commissions are excluded Although students working as part-time employees 20 hours per week or less are excluded from

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[40]E O 11491 excludes management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, and supervisors from appropriate units, except as provided in Section 24 of the Order which states that the Order does not preclude "the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order "

Section 2(c) defines "supervisor" as "an employee having authority, in the interest of an agency, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment; "

Section 2(f) defines "agency management" as "the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor management relations program established under this Order; "

The NLRA excludes supervisors from the term "employee" and defines "supervisor" in Section 2(11) as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment "

[41]Four general statutes – Michigan PERA, Rhode Island state government employees law, South Dakota state and local government employees and teachers law and Wisconsin MERA – and two local ordinances (Los Angeles and San Francisco) contain no exclusions

coverage of the Iowa PERA, the law excepts from the exclusion "graduate or other post-graduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant."

More than half (or eight) of the teacher statutes provide for certain employee exclusions, and where specified, most of these refer to school superintendents and assistant school superintendents.

Definitions of confidential employees can be found in 13[42] of the 24 authorizations covering state and local government employees which exclude this category of employees; managerial employees are defined in ten[43] of the 13 laws excluding this group of employees. Definitions of supervisory employees, found in ten[44] of the 13 laws excluding this group, are all nearly identical to the definitions contained in the NLRA and E.O. 11491.

Separate Units Prescribed. Like the NLRA and E.O. 11491, more than a third (or 13) of the 35 general laws covering state and/or local government employees provide for separate units of professional from nonprofessional employees, unless, as in most cases, professional employees vote for inclusion in nonprofessional units. Under three other laws, bargaining units may include both professional and nonprofessional employees provided a majority of each group votes for inclusion in such unit. Separate units are also, although less frequently, provided or permitted for supervisors, law enforcers and firefighters under these general laws (see Table 3).

The Minnesota PELRA is noteworthy in its treatment of employees regarded as "essential employees," in a manner similar to the Pennsylvania PERA. Although the Minnesota law does not articulate the employees to be designated as "essential" and leaves that determination to the director of mediation services and the PERB, it requires that they be placed in units separate from other employees, and denies them the limited right to strike accorded other employees. The Pennsylvania law prohibits from striking prison or mental hospital guards and employees directly involved with

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[42]See Connecticut MERA, Florida state and local government employees law, Indiana state and local government employees law, Iowa PERA, Kansas state and local government employees law, Massachusetts state and local government employees law, Nevada LGEMRA, New Mexico personnel regulations, New York Taylor Law, Oregon state and local government employees, firefighters and policemen law, Pennsylvania PERA, Vermont MERA, and District of Columbia personnel regulations.

[43]See Florida state and local government employees law, Kansas state and local government employees law, Prince George's County ordinance, Massachusetts state and local government employees law, Montana state and local government employees law, New York Taylor Law, Pennsylvania PERA, Vermont SELRA, Wisconsin SELRA and District of Columbia personnel regulations.

[44]See Iowa PERA, Kansas state and local government employees law, Montana state and local government employees law, New Mexico personnel regulations, Oklahoma FPAL, Oregon state and local government employees, firefighters and policemen law, Eugene city ordinance, Wisconsin SELRA and MERA, and District of Columbia personnel regulations.

and necessary to the functioning of the courts, and the law prohibits their inclusion in units with other public employees. Another law that makes a similar distinction is the Alaska PERA which sets up three classes of employees ranked in order of the essentiality of services performed, for purposes of assigning strike rights and application of impasse resolution procedures. Class 1, the only class prohibited from striking, consists of employees whose services "may not be given up for even the shortest period of time"—i.e., police and fire protection, correctional institution and hospital employees. However, unlike the Minnesota and Pennsylvania laws, the Alaska law does not require separate units for these employees. The Oregon state and local government employees, firefighters and policemen law also limits the right to strike in the case of policemen, firemen and guards at correctional institutions or mental hospitals, but it also does not prescribe separate units for these employees.

More than half (or eight) of the teacher statutes contain separate unit provisions with seven of them mentioning separate units for school administrators. The Montana nurses law permits units of professional employees separate from nonprofessional employees, and the Texas FPERA stipulates that the members of a fire department and a police department within the same city, town or other political subdivision shall constitute separate units (see Table 3).

One law—the Los Angeles County ERO—not only requires separate units for managerial and confidential employees separate from nonmanagerial or nonconfidential employees, but has gone so far as to limit the number of managerial employees so designated to "2% of the total number of full-time employees of the County."

Other Limitations. A few laws were found to contain limits on the choice of employee organization to represent special groups of employees, such as found in Section 1173-10.0 of the New York City CBL, which reads:

> b. No organization seeking or claiming to represent members of the police force of the police department shall be certified if such organization (i) admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than members of the police force of the police department. [45]

Two California laws[46] provide for the right of "peace officers" to join or participate in "employee organizations which are composed solely of peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training

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[45] Both the New Jersey and Nevada statutes restrict the right of policemen to join an employee organization that admits employees other than policemen to membership. As in the case of the New York City CBL, these laws do not prescribe separate units for policemen.

[46] See Meyers-Milias-Brown Act and the California state government employees law.

in furtherance of the police profession, and which are not subordinate to any other organization." These two laws also permit professional employees to be represented separately from nonprofessional employees by a professional employee organization consisting of such professional employees.

The Kansas state and local government employees law stipulates that "a recognized employee organization" shall not include uniformed police and public property security guards, or uniformed firefighters with any other public employees. The law also requires separate employee organizations for professional employees unless they elect to be included with nonprofessional employees.

The Pennsylvania PERA prohibits the inclusion of "employes directly involved with and necessary to the functioning of the courts" and prison, mental hospital and security guards in units with other public employees, but permits such employees to form separate "homogenous employee organizations," provided that organizations representing security guards are not affiliated with "any other organization representing or including as members, persons outside the organization's classification."

In the case of supervisory employees, the New Jersey EERA requires separate units for them and "except where established practice, prior agreement or special circumstances dictate the contrary," prevents supervisors from being represented by an employee organization that admits nonsupervisors to membership. Two other laws simply permit supervisors and certain other employees to form their own separate organizations.[47]

The Wisconsin MERA permits law enforcement or firefighting supervisors to organize separate units, but WERC may require that their representative be an organization that is a separate local entity from the representative of other public employees. The statute, however, notes that this requirement shall not restrict the representative's state or national affiliation. The Wisconsin SELRA, on the other hand, prohibits the certified representative of a statewide supervisory unit from affiliating with organizations representing other public employees.

Apart from these restrictions on the choice of employee organization, a few laws prohibit certain classes of employees from actively participating in organizations that represent other public employees.[48] The New York Taylor Law--which excludes

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[47] See Minnesota PELRA (supervisory and confidential employees, principals and assistant principals) and Oklahoma FPAL (supervisory and professional municipal employees).

[48] See Los Angeles city ordinance (management and confidential employees), San Francisco City and County ERO (management, supervisory and confidential employees) and New Mexico personnel regulations (supervisors and confidential employees).

employees designated as managerial or confidential—not only prohibits them from holding office in an employee organization, but bars them from membership in any employee organization that is or seeks to become a certified or recognized employee representative.

Under a unique provision found in the Rhode Island statute covering certified administrators in the City of Providence, "certified administrators below the rank of superintendent or assistant superintendent are prohibited from negotiating professionally or bargaining collectively on behalf of the city." Similarly, the Utah Fire Fighters' Negotiation Act provides that "No negotiating team of the established bargaining unit is appropriate which includes any fire chief, assistant chief, battalion or deputy chief, captain or lieutenant."

II. LEGAL PROVISION FINDER

Master Outline

A. Appropriate Unit

B. Employees Excluded

C. Unit Determination Criteria

D. Separate Units

1. Professional
2. Supervisory
3. School Administrators
4. Police (and Guards)
5. Firefighters
6. Teachers
7. Other

E. Other Limitations

1. Professional
2. Supervisory
3. Police (and Guards)
4. School Administrators
5. Other

Note: Items included in the Master Outline above which have not been adopted in a statute are omitted in the following listings. Hence, the listing for the Alaska PERA, which does not contain provisions regarding separate units, omits item D.

ALASKA

1. Public Employment Relations Act (PERA)

A. Appropriate Unit: Determined by the state personnel board in each case involving state employees and by the Department of Labor in each case involving all other public employees. Sec. 23.40.090 and 23.40.250(3).

B. Employees Excluded: The definition of "public employee" excludes elected or appointed officials, teachers and non-certificated employees of school districts. Sec. 23.40.250(5).

C. Criteria: The unit shall be determined "based on such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided." Sec. 23.40.090.

2. Teachers law

A. Appropriate Unit: The law does not specifically provide for the designation of units but merely states: "When a majority of the certificated employees *in a school district* have designated an educational organization of their own choosing to bargain for them, the organization shall be recognized by the school board as the bargaining agent for all the certified staff...." [Emphasis supplied.] Sec. 14.20.560(a).

B. Employees Excluded: School superintendents are excluded. Sec. 14.20.560(a).

D. Separate Units

3. School Administrators: The law appears to allow for separate units of administrative personnel in Sec. 14.20.560(f): "Nothing in this section shall be construed to prevent certificated administrative personnel groups, including principals and assistant principals, from having the right to negotiate independently of the other certificated personnel if they choose to do so as the result of a secret ballot."

CALIFORNIA

1. Meyers-Milias-Brown Act

A. Appropriate Unit: "In the absence of local procedures for resolving disputes

on the appropriateness of a unit of representation, upon the request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for the resolving of the dispute." Sec. 3507.1.

B. Employees Excluded: By definition, "public employee" excludes persons elected by popular vote or appointed to office by the Governor. Sec. 3501(d).

The law states the "public agency" does not include "a school district, or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system..." Sec. 3501(c).

D. Separate Units

1. Professional: "Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of such professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute.

"'Professional employees,' for the purpose of this section, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and the various types of physical, chemical, and biological scientists." Sec. 3507.3.

E. Other Limitations

3. Police: The statute provides that "the governing body may not prohibit the right of its employees who are full-time 'peace officers'... to join or participate in employee organizations which are composed solely of such peace officers, which concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession, and which are not subordinate to any other organization." Sec. 3508.

2. State government employees law

A. Appropriate Unit: The law contains no provision on the determination of units. It does, however, permit the state to adopt reasonable rules and regulations for the administration of the law. However, where state civil service

employees are involved, the law permits the State Personnel Board to adopt rules and regulations. Sec. 3532.

B. Employees Excluded: The definition of "public employee" excludes persons elected by popular vote or appointed to office by the Governor. Sec. 3526(c).

D. Separate Units

1. Professional: "Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of such professional employees.

"'Professional employees,' for the purposes of this section, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers and the various types of physical, chemical, and biological scientists." Sec. 3533.

E. Other Limitations

3. Police: The provision here is substantially the same as that found in Sec. 3508 of the Meyers-Milias-Brown Act.

3. Public Educational Employer-Employee Relations Act (PEERA)

A. Appropriate Unit: "(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

(b) In all cases: (1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees. (2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise. (3) Classified employees and certificated employees shall not be included in the same negotiating unit." Sec. 3545.

"Board" is defined as "the Educational Employment Relations Board pursuant to Section 3541." Sec. 3540.1(a).

"No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a

petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint." Sec. 3542(a)

B Employees Excluded: The law defines "public school employee" or "employee" as "any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees." Sec. 3540.1(j)

In addition, Sec. 3543.4 provides: "No person serving in a management position or a confidential position shall be represented by an exclusive representative. Any person serving in such a position shall have the right to represent himself individually or by an employee organization whose membership is composed entirely of employees designated as holding such positions, in his employment relationship with the public school employer, but, in no case, shall such an organization meet and negotiate with the public school employer. No representative shall be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position or a confidential position."

"'Confidential employee' means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations." Sec. 3540.1(c).

"'Management employee' means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Educational Employment Relations Board." Sec.3540.1(g).

C. Criteria: See A above.

E. Separate Units Prescribed

2. Supervisory: See A above.

"Supervisory employee" is defined as "any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 3540.1(m)

7. Other (Classified employees or certificated employees): See A above.

5. Los Angeles city ordinance

A. Appropriate Unit: The Los Angeles City Employee Relations Board has the power "to determine employee representation units upon the request of qualified employee organizations and determine any dispute concerning the relationship of employees in new or deleted classes to representation units." Sec. 4.810 f(1)

C. Criteria: "The Board shall consider the following and other relevant factors in determining the appropriateness of representation units: (1) The community of interest of employees. (2) The history of employee representation in the unit, among other employees of the City and in similar employment (3) The effect of the unit on the efficient operation of the City and sound employee relations. (4) The extent to which employees have common skills, working conditions, job duties or similar education requirements. (5) The effect on the City's classification structure of dividing a single classification among two or more units. (6) The right of professional employees to be represented separately from nonprofessional employees. (7) Management or confidential employees shall not be included in the same unit with other employees." Sec. 4.822 a.

In addition, Sec 4.822 c(1) provides: "In investigating the appropriateness of proposed representation units, the Board shall obtain and consider the reports and recommendations of the Personnel Department; which shall take into consideration the views of all concerned departments and offices, and the effect on the City. Affected qualified employee organizations may submit their views concerning the proposed unit, which views shall also be considered by the Board."

D. Separate Units

1. Professional: See C above.

"Professional employee" is defined as "An employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers and various types of physical, chemical and biological scientists." Sec. 4.801.

7. Other (Management or confidential employees): See C above.

Furthermore, Sec. 4.830 d states that management and confidential employees shall be designated by departments in consultation with the Personnel Department, and that in the event of a dispute with a qualified employee organization over such designations, the matter may be appealed to the Employee Relations Board for determination.

"Confidential employee" is defined as "An employee who is privy to information leading to decisions of City management affecting employee relations." Sec. 4.801.

"Management employee" is defined as "An employee having significant responsibilities for formulating and administering City policies and programs, including but not limited to general managers of departments, heads of offices and bureaus, and all persons in management classes subject to one-year probationary period pursuant to Section 5.26 of the Civil Service Commission Rules. An employee appointed to a position in a management class subject to a one-year probationary period prior to the time that a one-year probationary period was required for such class is a management employee." Sec. 4.801.

E. Other Limitations

5. Other (Management or confidential employees): The ordinance provides that management or confidential employees shall not be included in the same unit with other employees, and further provides that they "shall not represent any employee organization which represents other employees on matters within the scope of representation." Sec. 4.830 d.

6. Los Angeles County Employee Relations Ordinance (ERO)

A. Appropriate Unit: Section 8(e) of the ordinance provides that the "Agreement of the parties involved on the scope of any employee representation unit is subject to the Commission's [i.e., the Los Angeles County Employee Relations Commission] concurrence that such unit is appropriate." Section 7(g)(1) authorizes the Commission "To determine in disputed cases or otherwise to approve appropriate employee representation units."

Furthermore, Section 8(f) provides: "The Commission shall determine any dispute concerning the relationship between existing employee representation units involving the addition of new classes to, or the deletion of classes from, the Salary Ordinance."

B. Employees Excluded: "Employee" is defined as "any person employed by the County in a position in the classified Civil Service." Sec. 3(f).

C. Criteria: "In the determination of appropriate employee representation units the following factors, among others, are to be considered:

(1) Which unit will assure employees the fullest freedom in the exercise of rights granted under this Ordinance.

(2) The community of interest of the employees.

(3) The history of employee relations in the unit, among other employees of the County, and in similar public employment.

(4) The effect of the unit on the efficient operation of the public service and sound employee relations.

(5) Whether management officials at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the Board of Supervisors with respect to wages, hours and other terms and conditions of employment subject to negotiation.

(6) The effect on the existing classification structure of dividing a single classification among two or more units." Sec. 8(b).

D. Separate Units Prescribed

1. Professional: "[P]rofessional employees shall not be included in a unit with nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit...." Sec. 8(c).

"Professional" is defined as "(1) a classification of employees engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (2) a classification of employees who (i) have completed the courses of specialized intellectual instruction and study in clause (iv) of item (1) of this paragraph, and (ii) are performing related work under the supervision of a professional person in order to qualify to become a professional employee as defined in item (1) of this paragraph." Sec. 3(q).

2. Supervisory: "[S]upervisory employees shall not be included in a unit with nonsupervisory employees unless such supervisory employees are in the same classification with nonsupervisory employees, provided, however, that in such event, said supervisory employees shall not participate in the management of an employee organization as an officer of the organization or represent it in dealings with management representatives when such activity would result in a conflict of interest or otherwise be incompatible with law or the official duties of the employees ..." Sec. 8(c).

"Supervisory employees" is defined as "any employees, having

authority to exercise independent judgment in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or having the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 3(r).

7. Other (Management and confidential employees): "[M]anagement and confidential employees shall not be included in the same unit with nonmanagement or nonconfidential employees." Sec. 8(c).

"Management employee" is defined as "any employee having significant responsibilities for formulating and administering County policies and programs, and includes the Chief Administrative Officer, department heads, and any other employees who are so designated by the Director of Personnel based upon the recommendation of the department head or department heads concerned. For the purpose of this Ordinance such persons shall not exceed 2% of the total number of full-time employees of the County." Sec. 3(l).

"Confidential employee" is defined as "an employee who is privy to decisions of County management affecting employee relations." Sec. 3(c).

E. Other Limitations

2. Supervisory: See D2 above.

7. San Francisco City and County Employee Relations Ordinance (ERO)

A. Appropriate Unit: The ordinance establishes 11 broad representation units, with provisions for the separate representation of certain building trades and other craft employees in Unit 1 and of professional employees in each professional category in Unit 8, as follows:

"(a) All employees throughout the City and County of San Francisco within any of the following categories shall constitute an appropriate representation unit:

"*Unit 1.* In determining any appropriate representation unit MERP [Municipal Employees Relations Panel] shall grant a separate representation to any Building Trade or other craft or group which has historically established separate bargaining units in private industry or the journeymen of which normally attain status through the completion of a substantial period of apprenticeship. In establishing any such craft or group unit, MERP shall include all apprentices, journeymen, foremen and general foremen that are customarily included in such craft or group units in negotiated contracts in

private industry and shall also include within the separate craft or group unit those positions that have historically been represented by the craft or group organization in the handling of grievances and determination of wages and working conditions with the City and County of San Francisco.

"...Classifications or positions which combine the work of more than one craft shall be placed in the craft unit representing the highest skill required to be performed by the position. In the event this is not possible to ascertain, any individual or individuals occupying any such position or classification shall have the right to a self-determination election to determine appropriate placement of the position or classification....

"*Unit 2.* Non-supervisory employees in blue collar positions not included in Unit 1 above.

"*Unit 3.* Supervisory employees in blue collar positions related to Units 1 and 2, not included in Unit 1.

"*Unit 4.* Non-supervisory employees in white collar positions.

"*Unit 5.* Supervisory employees in white collar positions.

"*Unit 6.* Non-professional hospital and institutional employees.

"*Unit 7.* Municipal Railway employees including supervisors excepting clerical classifications, transit car cleaners, engineers, technical engineering employees and related supervisory employees to excepted classes.

"*Unit 8.* Professional employees; provided, however, that each profession shall have the right to separate representation for that particular professional category.

"*Unit 9.* Courtroom, security, and detention personnel.

"*Unit 10.* Technical Engineering Employees to include employees working in technical supportive capacities to engineers and architectural staff.

"*Unit 11.* Supervisory employees in positions related to Units 6, 8, 9, 10.

"(b) In the event an employee or employee organization disagrees with their inclusion in a particular unit above, the aggrieved party may submit their protest to the Municipal Employees Relations Panel for a hearing and final determination. In arriving at said determination MERP shall consider, in addition to any other factors, the similarity of skills, wages, hours and other working conditions among the employees involved, the history of collective bargaining with regard to the employees involved and the desires of said employees." Sec. 16.210.

B. Employees Excluded: Section 16.201 excludes police officers or patrolmen and firefighters employed by cities of 100,000 population or more who are dealt with in Section 8.405 of the San Francisco Charter.

Management and confidential employees are not included in any of the established units. See E5 below.

C. Criteria: See A above.

D. Separate Units Prescribed

1 Professional: See A above.

"Professional employees" is defined as "employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical, and biological scientists." Sec. 16.202(13).

2. Supervisory: See A above.

"(a) The Employee Relations Director [the City and County representative in employer-employee relations] in consultation with department heads shall specify the employees who are to be designated as...supervisory...for the purpose of this ordinance. Each such person shall be notified by his department head of his ...supervisory... status. A list of the employees so designated shall be maintained in the office of the Civil Service Commission and shall be available to MERP.

"(b) If an employee designated as...supervisory..., or an employee organization, or a department head, disagrees with such designation, the question shall be taken to MERP for hearing and final determination." Sec. 16.208.

"Supervisory employee" is defined as "any employee, as designated by the Employee Relations Director, who has authority to hire, assign, evaluate or discipline other employees, or to adjust their grievances, or effectively to recommend any such action." Sec. 16.202(17).

7. Other (Craft employees; non-professional hospital employees; courtroom, security and detention personnel; etc.): See A above.

E. Other Limitations

2. Supervisory: See E5 below.

5. Other (Management employees; confidential employees): Section 16.208(c) provides: "Management, supervisory and confidential employees may not represent an employee organization which represents other than management, supervisory or confidential employees on matters within the scope of representation."

"(a) The Employee Relations Director [the City and County representative in employer-employee relations] in consultation with department heads shall specify the employees who are to be designated as management...or confidential for the purpose of this ordinance. Each such person shall be notified by his department head of his management

...or confidential status. A list of the employees so designated shall be maintained in the office of the Civil Service Commission and shall be made available to MERP.

"(b) If an employee designated as management...or confidential, or an employee organization, or a department head, disagrees with such designation, the question shall be taken to MERP for hearing and final determination." Sec. 16.208.

"Management employee" is defined as "any employee, as designated by the Employee Relations Director, who is in a high administrative and policy-influencing position with responsibility for managing a major function or rendering management advice to top-level administrative authority." Sec. 16.202(8).

"Confidential employee" is defined as "an employee who is privy to recommendations or decisions of City and County management affecting employee relations." Sec. 16.202(1).

CONNECTICUT

1. Municipal Employee Relations Act (MERA)

A. Appropriate Unit: Determined in each case by the state board of labor relations. Sec. 7-471(3).

B. Employees Excluded. "Employee" by definition excludes "elected officials, administrative officials, board and commission members, certified teachers, part-time employees who work less than twenty hours per week, and persons in such supervisory and other positions as may be excluded from coverage under this act...." Sec. 7-467(2).

In regard to the exclusion of supervisors, Sec. 7-471(2) provides: "The board shall have the power to determine whether a supervisory or other position is covered by this act in the event of a dispute between the municipal employer and an employee organization. In determining whether a supervisory position should be excluded from coverage under this act, the board shall consider, among other criteria, whether the principal functions of the position are characterized by not fewer than two of the following: (A) Performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees; (B) performing such duties as are distinct and dissimilar from those performed by the employees supervised; (C) exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing the provisions of a collective bargaining agreement; and (D) establishing or participating in the establishment of performance standards for subordinate employees and

taking corrective measures to implement those standards. The above criteria for supervisory positions shall not necessarily apply to police or fire departments."

C. Criteria: "The board shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by the act and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the municipal employer unit or any other unit thereof, provided there shall be a single unit for each fire department consisting of the uniformed and investigatory employees of each such fire department and a single unit for each police department consisting of the uniformed and investigatory employees of each such police department and no unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, provided employees who are members of a profession may be included in a unit which includes nonprofessional employees if an employee organization has been designated by the board or has been recognized by the municipal employer as the exclusive representative of such unit and a majority of the employees in such profession vote for inclusion in such unit, in which event all of the employees in such profession shall be included in such unit." Sec. 7-471(3).

D. Separate Units

1. Professional: See C above

"Professional employee" is defined as "(A) Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (B) any employee who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of subparagraph (A) and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subparagraph (A) hereof." Sec. 7-471(3).

4. Police: A single unit consisting of uniformed and investigatory employees is prescribed for each police department. See C above.

5. Firefighters: A single unit consisting of uniformed and investigatory employees is prescribed for each fire department. See C above.

2. Teachers Negotiations Act (TNA)

A. Appropriate Unit: The statute contains definitions for two units: "(1) The 'administrators' unit' means those certified professional employees in a school district who are employed in positions requiring an intermediate administrator or supervisor certificate, or the equivalent thereof, and are not excluded from the purview of Sec. 10-153a to 10-153g, inclusive. (2) The 'teachers' unit' means the group of certified professional employees who are employed by a town or regional board of education in positions requiring a teaching or special services certificate and are not included in the administrators' unit or excluded from the purview of Sec. 10-153a to 10-153g, inclusive." Sec. 10-153b(a).

B. Employees Excluded: "The superintendent of schools, assistant superintendents, certified professional employees who act for the board of education in negotiations with certified professional personnel or are directly responsible to the board of education for personnel relations or budget preparation, temporary substitutes and all non-certified employees of the board of education are excluded from the purview of Section 3 to 6 (Secs. 10-153a to 10-153f), inclusive, of this act and Sec. 10-153g." Sec. 10-153b(b).

D. Separate Units Prescribed

3. School Administrators: A separate administrator unit is designated. See A above.

3. State employees law

A. Appropriate Unit: "The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof." Sec. 5(b).

B. Employees Excluded: "Employee" is defined as "any employee of an employer, whether or not in the classified service of the employer, except elected or appointed officials, board and commission members, part-time employees who work less than 20 hours per week and confidential employees; ...." Sec. 1(b).

"Confidential employee" is defined as "any public employee who would have access to confidential information used in collective bargaining." Sec. 1(e).

C Criteria: "In determining the appropriateness of the unit, the board shall: (1) Take into consideration, but shall not be limited to, the following: (i) Public employees must have an identifiable community of interest, and (ii) the effects of over-fragmentation; (2) not decide that any unit is appropriate if such unit includes both professional and non-professional employees, unless a majority of such professional employees vote for inclusion in such unit; (3) take into consideration that when the state is the employer, it will be bargaining on a statewide basis unless issues involve working conditions peculiar to a given governmental employment locale; and (4) permit the faculties of (i) The University of Connecticut, (ii) the state colleges, (iii) the community colleges, (iv) the state technical colleges; and (v) the state vocational schools shall each comprise a separate unit, which in each case shall have the right to bargain collectively with its respective board of trustees or its designated representative. Non-faculty professional staff of the above institutions may by mutual agreement be included in such bargaining units, or they may form a separate bargaining unit of their own. This section shall not be deemed to prohibit multi-unit bargaining." Sec.5(b).

D Separate Units

1. Professional: See C above.

"Professional employee" is defined as "(1) Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; and (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or (2) any employee who has completed the courses of specialized intellectual instruction and study described in subsection (c)(1)(iv) and is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subsection (c)(1)." Sec. 1(c).

7. Other (University and Community college non-faculty personnel): See C above.

DELAWARE

1. State and local government employees law

A. Appropriate Unit: Determined in each case by the Department of Labor and Industrial Relations. Sec. 1304.

B. Employees Excluded: As defined, "public employee" excludes "(1) any person elected by popular vote or appointed to office by the Governor; (2) any certified professional employee of the public school system of the State." Sec. 1301(b).

C. Criteria: "In determining, modifying or combining the bargaining unit, the Department shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the employees; and the desire of the public employees." Sec. 1304.

2. Teachers law

A. Appropriate Unit: The statute merely mentions that "An organization certified as the exclusive negotiating representative shall have the right to be the exclusive negotiating representative of public school employees *of the school district* in all matters relating to salaries, employee benefits, and working conditions." [Emphasis supplied.] Sec. 4006(a).

B. Employees Excluded: The law defines "public school employee" as "any certificated nonadministrative employee employed by a school district" and excludes "supervisory or staff personnel" from the definition. Sec.4001(c).

FLORIDA

1. State and local government employees law

A. Appropriate Unit: "Bargaining unit" is defined as "either that unit determined by the commission, or that unit determined through local regulations promulgated pursuant to Sec. 447.603, Florida Statutes, or that unit determined by the public employer and the public employee organization and approved by the commission to be appropriate for the purposes of collective bargaining. However, no bargaining unit shall be defined as appropriate which includes employees of two employers that are not departments or divisions of the State, a county, or municipality, or other political entity." Sec. 447.203(7).

"Commission" is defined as "the public employees relations commission created by Sec. 447.205." Sec. 447.203(1).

B. Employees Excluded: "Public employee" is defined as "any person employed by a public employer except:

(a) Those persons appointed by the governor or elected by the people, agency heads, members of boards and commissions.

(b) Those persons holding positions by appointment or employment in the organized militia.

(c) Those individuals acting as negotiating representatives for employer authorities.

(d) Those persons who are designated as managerial or confidential employees pursuant to criteria contained herein upon application of the public employer to the public employees relations commission.

(e) Those persons holding positions of employment with the Florida Legislature.

(f) Those persons who have been convicted of a crime and are inmates confined to institutions within the state." Sec. 447.203(3).

"Managerial employees" are defined as "those who:

(a) Formulate or assist in formulating policies which are applicable to bargaining unit employees; or

(b) May reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations; or

(c) Have a role in the administration of agreements resulting from collective bargaining negotiations; or

(d) Have a significant role in personnel administration; or

(e) Have a role in employee relations; or

(f) Are included in the definition of administrative personnel contained in Sec. 228.041(10); provided however, collective bargaining contracts entered into prior to the effective date of this law shall remain in effect for the period of such contracts, and upon the expiration of these existing contracts, the provisions of this paragraph shall apply; or

(g) Have a role in the preparation and administration of budgets for any public agency or institution or subdivision thereof; and

(h) Perform jobs that are not of a routine, clerical or ministerial nature and require the exercise of independent judgment, provided however that public employees as defined under Sec. 633.30(1) are excluded from this definition." Sec. 447.203(4).

"Confidential employees" are defined as "persons who act in a confidential capacity to, assist, or aid managerial employees as defined in subsection (4)." Sec. 447.203(5).

In addition, see A above.

C. Criteria: "In defining a proposed bargaining unit, the commission shall take into consideration:

(a) The principles of efficient administration of government;

(b) The number of employee organizations with which the employer might have to negotiate;

(c) The compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public;

(d) The power of the officials of government at the level of the unit to agree or make effective recommendations to other administrative authority or legislative body with respect to matters of employment upon which the employee desires to negotiate;

(e) The organizational structure of the public employer;

(f) Community of interest among the employees to be included in the unit, considering: 1. The manner in which wages and other terms of employment are determined; 2. The method by which jobs and salary classifications are determined; 3. Inter-dependence of jobs and interchange of employees; 4. Desires of the employees; 5. The history of employee relations within the organization of the public employer concerning organization and negotiation;

(g) The statutory authority of the public employer to administer a classification and pay plan;

(h) Such other factors and policies as the commission may prescribe by regulations or by its decisions; provided that no unit shall be established or approved for purposes of collective bargaining which includes both professional and non-professional employees unless a majority of each group votes for inclusion in such unit." Sec. 447.307(4).

D. Separate Units

1. Professional: See C above.

The law defines "professional employee" as "(a) Any employee engaged in work in any two or more of the following categories: 1. Work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; 2. Work involving the consistent exercise of discretion and judgment in its performance; 3. Work of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and 4. Work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education, an apprenticeship or training in the performance of routine mental or physical processes; or

(b) Any employee who: 1. Has completed the course of specialized intellectual instruction and study described in subparagraph 4 of

paragraph (a), and 2. Is performing related work under supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a)." Sec. 447.203(13).

GEORGIA

1. Fire Fighter's Mediation Act

A. Appropriate Unit: The law merely provides that "The organization selected by vote of the majority of the fire fighters *in any fire department* shall be recognized by the proper corporate authority...as the sole and exclusive bargaining agent for all of the members of the fire department...." [Emphasis supplied.] Sec. 54-1305.

HAWAII

1. Public Employment Relations Act (PERA)

A. Appropriate Unit: The law designates 13 statewide units as follows: "(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit: (1) Nonsupervisory employees in blue collar positions; (2) Supervisory employees in blue collar positions; (3) Nonsupervisory employees in white collar positions; (4) Supervisory employees in white collar positions; (5) Teachers and other personnel of the department of education under the same salary schedule; (6) Educational officers and other personnel of the department of education under the same salary schedule; (7) Faculty of the University of Hawaii and the community college system; (8) Personnel of the University of Hawaii and the community college system, other than faculty; (9) Registered professional nurses; (10) Nonprofessional hospital and institutional workers; (11) Firemen; (12) Policemen; and (13) Professional and scientific employees other than registered professional nurses." Sec. 89-6(a).

Units (9) through (13) are set forth as optional appropriate units, employees in which may either vote for separate units or for inclusion in their respective units (1) through (4). If a separate unit is desired by a majority of the employees, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; otherwise, the supervisory employees shall be placed in units (2) or (4), as the case may be. Sec. 89-6(a).

The law also sets forth the bases for differentiating classes of employees such as blue collar from white collar employees. Sec. 89-6(a).

HPERB is authorized to establish procedures, investigate, and after a hearing upon due notice, make a final determination of disputes concerning the applicability of Sec. 89-6 to specific positions and employees. Sec. 89-5(b)(1).

B. Employees Excluded: "(c) No elected or appointed official, member of any board or commission, representative of a public employer, including the administrative officer, director, or chief of a state or county department or agency, or any major division thereof as well as his deputy, first assistant and any other top-level managerial and administrative personnel, individual concerned with confidential matters affecting employee-employer relations, part time employee working less than twenty hours per week, temporary employee of three months duration or less, employee of the executive office of the governor, household employee at Washington Place, employee of the executive office of the mayor, staff of the legislative branch of the State, City and County of Honolulu and Counties of Hawaii, Maui and Kauai, employee of the executive office of the lieutenant governor, inmate, kokua [means assistant or helper in Hawaiian], patient, ward or student of a state institution, student help or any commissioned and enlisted personnel of the Hawaii national guard, shall be included in any appropriate bargaining unit or entitled to coverage under this chapter." Sec. 89-6.

D. Separate Units

1. Professional: See A above.

"Professional employee" is defined as "(A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (B) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (A) (iv), and (ii) is performing related work under the supervision of a professional employee as defined in (A)." Sec. 89-2(15).

2. Supervisory: See A above.

"Supervisory employee" is defined as "any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff,

recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 89-2(18).

3. School Administrators: See A above.

4. Police: See A above.

5. Firefighters: See A above.

6. Teachers: See A above.

7. Other (University and community college faculty and personnel; nurses; nonprofessional hospital workers; scientific employees; etc.): See A above.

IDAHO

1. Firefighters law

A. Appropriate Unit: The statute simply mentions that "The organization selected by the majority of the firefighters in any city, county, fire district or political subdivision shall be recognized as the sole and exclusive bargaining agent for all of the members *of the fire department*, unless and until recognition of such bargaining agent is withdrawn by a vote of the majority of the firefighters of such department." [Emphasis supplied.] Sec. 44-1803.

2. Teachers law

A. Appropriate Unit: The law merely provides that "The representative organization designated or selected for the purpose of negotiations by the majority of the professional employees *in a school district* shall be the exclusive representative for all professional employees in that district for purposes of negotiations." [Emphasis supplied.] Sec. 33-1273.

B. Employees Excluded: In its definition of the employees covered, the law states "that superintendents, supervisors or principals may be exluded from the professional employee group if a negotiation agreement between the board and local education organization so specifies." Sec. 33-1272 1.

INDIANA

1. Teachers law

A. Appropriate Unit: Bargaining units are determined as follows: "(1) The parties may agree on the appropriate unit. For this purpose the parties shall consist of the school employer and a school employee organization representing 20 percent or more of the school employees in any proposed unit.

"(2) If no such agreement is reached, or if any school employee in the proposed unit files a complaint to such unit with the board [i.e., education employment relations board], the board shall determine the proper unit." Sec. 20-7.5-1-10(a).

B. Employees Excluded: "School employee" is defined as any full-time certificated employee, excluding supervisors, confidential employees, employees performing security work and non-certificated employees. Sec. 20-7.5-1-2(e).

"Supervisor" means "any individual who has: (i) authority, acting for the school corporation, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline school employees, or (ii) responsibility to direct school employees and adjust their grievances, or (iii) effectively to recommend the action set out in these categories; provided, however, that exercise of the foregoing authority is not of a merely routine or clerical nature but requires the use of independent judgment. Supervisors shall include, but not be limited to, superintendents, assistant superintendents, business managers and supervisors, or directors with school corporation-wide responsibilities, principals and vice-principals or department heads who have responsibility for evaluating teachers." Sec. 20-7.5-1-2(h).

C. Criteria: The education employment relations board's determination "shall be based on, but shall not be limited to, the following considerations: (i) efficient administration of school operations; (ii) the existence of a community of interest among school employees; (iii) the effects on the school corporation and school employees of fragmentation of units; and (iv) recommendations of the parties involved." Sec. 20-7.5-1-10(a)(2).

2. State and local government employees law

A. Appropriate Unit: In each case the board shall determine the unit appropriate for the purpose of collective bargaining. Sec. 22-6-4-7(d).

"Board" is defined as "the Indiana education employment relations board." Sec. 22-6-4-1(g).

In addition, Sec. 22-6-4-7(d) provides that "supervisors may not be placed in a bargaining unit which includes non-supervisory employees...further, that

a unit may be found to be the appropriate unit in a particular case, even though some other unit might also be appropriate, or might be more appropriate."

B. Employees Excluded: "Employee" by definition excludes "officials appointed or elected pursuant to a statute to a policy-making position,. .and does not mean policemen, firemen, professional engineers, faculty member of any university or certificated employees of school corporations or confidential employees or municipal or county health care institution employees." Sec. 22-6-4-1(c).

"Confidential employee" is defined as "an employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the employer and its employees would make his membership in an employee organization incompatible with his official duties." Sec. 22-6-4-1(o).

"Certificated employee" is defined as "a person whose contract with the school corporation requires that he hold a license or permit from the state board of education or a commission thereof as provided in IC 1971, 20-6." Sec. 22-6-4-1(n).

C. Criteria: The board "shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees:...." Sec. 22-6-4-7(d).

D. Separate Units Prescribed

2. Supervisory: See A above.

"Supervisor" is defined as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 22-6-4-1(j).

IOWA

1. Public Employment Relations Act (PERA)

A. Appropriate Unit: "Board determination of an appropriate bargaining unit shall be upon petition filed by a public employer, public employee, or employee organization." Sec. 20.13.1.

Appeals from the Board's orders defining the appropriate bargaining unit shall be governed by Section 11 of the law. Sec. 20.13.3.

"Board" is defined as "the public employment relations board established under Sec. 5 of this Act." Sec. 20.3.5.

In addition, the Act provides that "professional and non-professional employees shall not be included in the same bargaining unit unless a majority of both agree." Sec. 20.13.4.

B. Employees Excluded: "The following public employees shall be excluded from the provisions of this Act:

1. Elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission.

2. Representatives of a public employer, including the administrative officer, director, or chief executive officer of a public employer or major division thereof as well as his deputy, first assistant, and any supervisory employees.

Supervisory employee means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All school superintendents, assistant superintendents, principals, and assistant principals shall be deemed to be supervisory employees.

3. Confidential employees.

4. Students working as part-time public employees 20 hours per week or less, except graduate or other post-graduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.

5. Temporary public employees employed for a period of four months or less.

6. Commissioned and enlisted personnel of the Iowa national guard.

7. Judges of the supreme court, district judges, district associate judges, and judicial magistrates, and the employees of such judges and courts.

8. Patients and inmates employed, sentenced, or committed to any state or local institution.

9. Persons employed by the state department of justice.

10. Persons employed by the commission for the blind." Sec. 20.4.

"Confidential employee" is defined as "any public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiations on behalf of the public employer.

'Confidential employee' also includes the personal secretary of any of the following: any elected official or person appointed to fill a vacancy in an elective office, member of any board or commission, the administrative officer, director, or chief executive officer of a public employer or major division thereof, or the deputy or first assistant of any of the foregoing." Sec. 20.3.7

C. Criteria: "In defining the unit, the board shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendations of the parties involved." Sec. 20.13.2.

D. Separate Units

1. Professional: See A above.

The Act defines "professional employee" as "any one of the following:

a. Any employee engaged in work: (1) Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (2) Involving the consistent exercise of discretion and judgment in its performance; (3) Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (4) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

b. Any employee who (i) has completed the courses of specialized intellectual instruction and study described in subparagraph four (4) of paragraph a of this subsection, and (ii) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph a of this subsection." Sec. 20.3.11.

KANSAS

1. State and local government employees law

A. Appropriate Unit: "When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization or by

five (5) or more employees, the public employee relations board, at the request of any of the parties, shall investigate such question and, after a hearing, rule on the definition of the appropriate unit in accordance with subsection (e) of this section." Sec. 75-4327(c).

B. Employees Excluded: As defined, "public employee" excludes "those persons classed as supervisory employees, professional employees of school districts, as defined by subsection (c) of K.S.A. 72-5413, elected and management officials and confidential employees." Sec. 75-4322(a).

"Supervisory employee" is defined as "any individual who normally performs different work from his subordinates, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. A memorandum of agreement may provide for a definition of 'supervisory employees' as an alternative to the definition herein." Sec. 75-4322(b).

"Elected and management official" is defined as "any elective official and any appointed officer charged by law with major administrative and management responsibilities." Sec. 75-4322(e).

"Confidential employee" is defined as "any employee whose unrestricted access to confidential personnel files or other information concerning the administrative operations of a public agency, or whose functional responsibilities or knowledge in connection with the issues involved in the meet and confer process would make his membership in the same employee organization as other employees incompatible with his official duties." Sec. 75-4322(c).

C. Criteria: "Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (1) The principles of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 1972 Supp. 75-4325 [see paragraph below]; and (7) the recommendations of the parties involved." Sec. 75-4327(e).

Section 75-4325 provides: "Nothing herein shall prohibit any individual employed as a supervisory employee from becoming or remaining a member

of an employee organization, but no public employer subject to this Act shall be compelled to deem individuals defined herein as supervisory employees as public employees for the purposes of this act."

D. Separate Units

4. Police and Guards: "A recognized employee organization shall not include.. (2) uniformed police employees and public property security guards with any other public employees, but such employees may form their own separate homogenous units ..." Sec. 75-4327(f). See also D5 below.

5. Firefighters: "A recognized employee organization shall not include ..(3) uniformed firemen with any other public employees, but such employees may form their own separate homogenous units: Provided, That the employees of a public safety department of cities which has both police and fire protection duties shall be an appropriate unit." Sec. 75-4327(f).

E. Other Limitations

1. Professional: "A recognized employee organization shall not include: (1) Both professional and other employees, unless a majority of the professional employees vote for inclusion in the organization...."

The law defines "professional employee" as "any employee: (1) Whose work is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; involves the consistent exercise of discretion and judgment; requires knowledge of an advanced type in a field of science or learning customarily acquired by prolonged study in an institution of higher learning; or (2) who has completed courses of prolonged study as described in paragraph (1) of this subsection, and is performing related work under the supervision of a professional person in order to qualify as a professional employee as defined in paragraph (1) of this subsection; or (3) attorneys at law or any other person who is registered as a qualified professional by a board of registration or other public body established for such purposes under the laws of this state." Sec. 75-4322(d).

A "recognized employee organization" is defined as "an employee organization which has been formally acknowledged by the public agency or certified as representing a majority of the employees of an appropriate unit." Sec. 75-4322(j).

3. Police and Guards: See D4 above.

5. Other (Firefighters): See D5 above.

2. **Teachers law**

A. Appropriate Unit: Determined by the state board of education. Sec.72-5420.

C. Criteria: "In each case where the question is in issue, the state board of education shall decide, on the basis of the community of interest between and among the professional employees of the board of education, except administrative employees, their wishes and/or their established practices including, among other things, the extent to which such employees have joined a professional employees organization, whether the unit appropriate for the purposes of professional negotiation shall consist of all persons employed by the board of education who are engaged in teaching or performing other duties of an educational nature, except administrative employees, or some subdivision thereof: *Provided,* That a unit including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education, except administrative employees. A unit including administrative employees shall include all administrative employees employed by the board of education." Sec. 72-5420.

D. Separate Units

3. School Administrators: The law provides for a separate unit of administrative employees defined in Section 72-5413(d) as "any professional employee who is employed by a board of education in an administrative capacity." See also C above.

KENTUCKY

1. **Fire Fighters Collective Bargaining Act (FFCBA)**

A Appropriate Unit: Determined by the State Labor Relations Board. Sec. 345.060(2).

C. Criteria: "The board shall decide in each case, in order to assure fire fighters the fullest freedom in exercising the rights guaranteed by this chapter, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours and other working conditions of the fire fighters involved, the history of collective bargaining, and the desires of the fire fighters." Sec. 345.060(2).

MAINE

1 Municipal Public Employees Labor Relations Act (MPELRA)

A. Appropriate Unit: "In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for purposes of collective bargaining the executive director (of the Maine Labor Relations Board) shall make the determination, except that anyone excepted from the definition of public employee may not be included in a bargaining unit" Sec. 966 1. See also C below.

Any party aggrieved by a ruling or determination of the executive director, may appeal to the Maine Labor Relations Board. The Board's decision, in turn, shall be subject to judicial review as provided for in Section 972 of the law. Sec. 968 4.

Furthermore, Section 966 3 provides: "Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation."

B. Employees Excluded: The definition of "public employee" excludes any person: "A. Elected by popular vote; or B. Appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer; or C. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head or division head; or D. Who is a department head or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the executive head or body of the public employer; or E. Who is a superintendent or assistant superintendent of a school system; or F. Who has been employed less than six months; G. On a probationary or provisional status, or who is a temporary, seasonal, on-call or part-time employee." Sec. 962 6.

C. Criteria: "The executive director of the board shall decide in each case whether, in order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, and in order to insure a clear and identifiable community of interest among employees concerned, the unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof and no unit shall include both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit, except that teachers

may be included in a unit consisting of other certificated employees." Sec. 966 2.

D. Separate Units

1. Professional: See C above.

"Professional employee" is defined as "any employee engaged in work: A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; B. Involving the consistent exercise of discretion and judgment in its performance; C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes." Sec. 962 5.

2. Supervisory: In the matter of supervisory employees, Section 966 1 provides: "In the event of a dispute...between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the executive director (of the MLRB) shall make the determination ...In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director shall consider, among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards. Nothing in this chapter is intended to require the exclusion of principals, assistant principals, other supervisory employees from school system bargaining units which include teachers and nurses in supervisory positions."

2. State Employees Labor Relations Act (SELRA)

A. Appropriate Unit: "In the event of a dispute between the public employer and an employee or employees as to the appropriateness of a unit for the purposes of collective bargaining...the executive director (of the Maine

Labor Relations Board) or his designee shall make the determination, except that anyone excepted from the definition of state employee may not be included in a bargaining unit." Sec. 979-E. See also C below.

Any party aggrieved by a ruling or determination of the executive director, may appeal to the Maine Labor Relations Board. The Board's decision, in turn, shall be subject to judicial review as provided for in Section 972 of the law. Sec. 979-G.2.

Furthermore, Section 979-E.3. provides: "Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit, any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation."

B. Employees Excluded: The definition of "state employee" excludes any person: "A Elected by popular vote; or B Appointed to office pursuant to statute, ordinance or resolution for a specified term by the Governor or by a department head or body having appointive power within the executive department; or C. Whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the Governor, a department head or body having appointive power within the executive department; or D. Who is a department or division head appointed to office pursuant to statute, ordinance or resolution for an unspecified term by the Governor or by a body having appointive power within the executive department; or E Who has been employed less than six months; or F Who is a temporary, seasonal or on-call employee; or G Who is serving as a member of the State Militia or National Guard." Sec. 979-A.6.

In the matter of supervisory employees, Section 979-E.1. provides: "In the event of a dispute between the public employer and an employee or employees as to whether a supervisory or other position is included in the bargaining unit, the executive director or his designee (of the MLRB) shall make the determination. In determining whether a supervisory position should be excluded from the proposed bargaining unit, the executive director or his designee shall consider among other criteria, if the principal functions of the position are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised or exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing a collective bargaining agreement

or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards."

C. Criteria: "In order to insure to employees the fullest freedom in exercising the rights guaranteed by this chapter, to insure a clear and identifiable community of interest among employees concerned, and to avoid excessive fragmentation among bargaining units in State Government, the executive director of the board or his designee shall decide in each case the unit appropriate for purposes of collective bargaining." Sec. 979-E.2.

3. University of Maine Labor Relations Act (LRA)

A. Appropriate Unit: "1. It is the express legislative intent that, in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, bargaining units shall be structured on a university system-wide basis with one unit for each of the following occupational groups:

A. Faculty;
B. Professional and administrative staff;
C. Clerical, office, laboratory and technical;
D. Service and maintenance;
E. Supervisory classified; and
F. Police.

It is intended that Cooperative Extension Service employees be included in appropriate units.

2. Assignment to bargaining units. In the event of a dispute over the assignment of jobs or positions to a unit, the executive director shall examine the community of interest, including work tasks among other factors, and make an assignment to the appropriate statutory bargaining unit set forth in subsection I.

3. Additional bargaining units. Notwithstanding subsection I, the Legislature recognizes that additional or modified university system-wide units may be appropriate in the future. Therefore, the employer or employee organizations may petition the executive director for the establishment of additional or modified university system-wide units. The executive director shall determine the appropriateness of such petitions, taking into consideration the community of interest and the declared legislative intent to avoid fragmentation whenever possible and to insure employees the fullest freedom in exercising the rights guaranteed by this chapter....

4. Unit clarification. Where there is a certified or currently recognized bargaining representative and where the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of that bargaining unit,

any public employer or any recognized or certified bargaining agent may file a petition for a unit clarification, provided that the parties are unable to agree on appropriate modifications and there is no question concerning representation." Sec. 1024.

Any person aggrieved by a ruling or determination of the executive director may appeal to the Maine Labor Relations Board. The Board's decision is made subject to judicial review as provided for in Section 972 of the Maine MPELRA. Sec. 1028 2.

B. Employees Excluded: The definition of "University employee" excludes any person: "A. Appointed to office pursuant to statute; B. Appointed by the Board of Trustees as a vice-president, dean, director or member of the chancellor's immediate staff; C. Whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the university; or D. Employed in his initial six months of employment." Sec. 1022 11.

C. Criteria: See A above.

D. Separate Units

1. Professional: See A above.

"Professional employee" is defined as "any employee engaged in work: A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; B. Involving the consistent exercise of discretion and judgment in its performance; C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes." Sec. 1022 7.

2. Supervisory: See A above.

"Supervisory employee" is defined as "any employee whose principal work tasks are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, in applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the

establishment of performance standards for subordinate employees and taking corrective measures to implement those standards." Sec. 1022 9.

4. Police: See A above.

7. Other (Faculty administrative staff; clerical, office, laboratory and technical; service and maintenance): See A above.

MARYLAND

1. Teachers law

A. Appropriate Unit: "The determination of the composition of the unit shall be made by the public school employer in negotiation with those employee organizations which request negotiation thereon; provided, however, that in no event shall there be more than two units in any county or Baltimore City; and provided further that all public school employees shall be included in one of said units and shall be permitted all the rights granted herein." Sec. 160(d).

B. Employees Excluded: The definition of "public school employees" excludes the superintendent of schools and persons designated by the public school employer to act in a negotiating capacity...." Sec. 160(a)(3).

2. Baltimore City Municipal Labor Relations Ordinance (MLRO)

A. Appropriate Unit: Whenever a petition or petitions have been filed with the Labor Commissioner claiming that a question concerning representation exists the Commissioner "shall process said petition and negotiate on behalf of the employer, with the employee organization and any party or parties permitted to intervene in the proceedings, for the purpose of endeavoring to reach an agreement concerning the question of representation within 5 days." Sec. 116.

"In considering the question of representation, the Labor Commissioner shall define the appropriate unit...." Sec. 116.

"In the event said Labor Commissioner, employee organization, employer, intervenor or intervenors fail to reach an agreement on any aspect of the question concerning representation, the Labor Commissioner shall refer the dispute for final determination to a board of three impartial persons selected from a panel obtained from an independent third party agency, agreeable to all parties, and such board, in reaching its determination, shall be bound by the provisions of this ordinance. The costs of such determination shall be divided among all parties thereto, in the event the parties are unable to agree

on an independent third party agency, the board shall be selected from a panel obtained from the federal mediation and conciliation service of the U. S. Department of Labor." Sec. 116.

"Appropriate unit" is defined as "a group of employees recognized as appropriate for representation by an employee organization." Sec. 111(a).

B. Employees Excluded: By definition "employee" excludes public school employees, policemen, firefighters, court employees, "part-time (other than regular part-time), seasonal, probationary, provisional or temporary employees, employees engaged in personnel work in other than a clerical capacity, and employees occupying positions which involve a relation of personal confidence between the one appointing and the one appointed...." Sec. 111(c).

C. Criteria: "In considering the question of representation, the Labor Commissioner shall define the appropriate unit pursuant to the following standards:

"A unit which consists of a majority of employees in a civil service job classification or group of related civil service job classifications shall be deemed prima facie an appropriate unit; this shall not limit the power of the Labor Commissioner to determine that a unit other than one based on job classification is appropriate so long as:

"(a) The description of the unit corresponds to a community of interest among the employees in the proposed unit, involving such criteria as similarity of job duties, skills, wages, educational requirements, supervision, hours of work, job location and working conditions.

"(b) The unit is compatible with the joint responsibilities of the employer and employees to serve the public.

"No unit shall be deemed appropriate if it includes both professional and other employees unless a majority of such professional employees vote for inclusion in such unit, nor shall any unit be deemed appropriate if it includes both supervisory and non-supervisory personnel." Sec. 116.

D. Separate Units

1. Professional: See C above.

The law defines "professional employee" as "any employee engaged in work which is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work, which involves the consistent exercise of discretion and judgment in its performance, of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period, and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher

learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes...." Sec. 111(g).

2. Supervisory: See C above.

The law defines "supervisory employees" as "those employees having the authority to exercise independent judgment in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or having the responsibility to direct them or adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a routine or clerical nature but requires the use of independent judgment; provided, however, that any employee who receives cash payment for overtime pursuant to the rules of the Board of Estimates shall not be deemed to be a supervisory employee..." Sec. 111(j).

3. Prince George's County ordinance

A. Appropriate Unit: Determined by the PERB Panel on Representation Matters in each case where certification is sought. Sec. 6(a). In addition, Section 14 states that the decisions of the Panel "shall not be subject to court review, except with respect to unit determinations that are alleged to be contrary to law."

The ordinance defines "appropriate unit" as "a group of employees for whom a labor organization may be certified as the exclusive bargaining representative...." Sec. 2(a).

B Employees Excluded: The definition of "employee" excludes "elected officials, management level employees, confidential employees and officials appointed pursuant to law to a policy-making position." Sec. 2(f).

"Management level employee" is defined as "any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof." Sec. 2(j).

C. Criteria: "In determining an appropriate unit, the Panel shall take into consideration, but shall not be limited to, the following: (1) community of interest, (2) the history of collective bargaining, (3) the desires of the employees, (4) the effectiveness and efficiency of labor management relations affected by the unit, and (5) the effects of overfragmentation and the effects on the efficiency of government operations." Sec. 6(b).

D. Separate Units Prescribed

1. Professional: "The panel shall not decide any unit is appropriate if: ...such unit includes both professional and non-professional employees, unless a majority of such professional employees vote for inclusion therein....[P]rofessionals may be permitted to form their own separate homogeneous units." Sec. 6(c).

"Professional employee" is defined as "any employee whose work: (1) is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (2) requires consistent exercise of discretion and judgment; (3) is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and (4) which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes." Sec. 2(m)

2. Supervisory: "The Panel shall not decide any unit is appropriate if: ...such unit includes both supervisors and non-supervisors....Supervisors ...may be permitted to form their own separate homogeneous units." Sec. 6(c).

"Supervisor" is defined as "any individual having authority, in the interest of the employer, (1) to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or (2) responsibly to direct them, or (3) to adjust their grievances, or (4) effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; provided, however, that the exercise of any single function of authority enumerated above shall not necessarily require the conclusion that the individual so exercising that function is a supervisor within the meaning of this law." Sec. 2(o).

4. Non-certificated public school employees law

A. Appropriate Unit: "In each county, except the following: Carroll, Frederick, Howard, Somerset, Wicomico and Worcester the public school employer may designate, as hereinafter provided, which if any, employee organization shall be the exclusive representative of all public school employees in a specified unit in the county. The determination of the composition of the unit shall be made by the public school employer in

negotiation with those employee organizations which request negotiation thereon; provided, however, that in no event shall there be more than three units in any county and no unit shall include both supervisory and non-supervisory employees; and provided further that in any county in which more than three units have been recognized and, as of the effective date of this act, have exclusive representation for the purposes of collective negotiations, said units may continue as negotiating units. All public school employees shall be included in one of said units and shall be permitted all the rights granted herein. Except for persons designated as management personnel or confidential employees under this section, all public school employees are eligible for membership in one of the negotiating units." Sec. (D).

B. Employees Excluded: The definition of "public school employee" excludes "management personnel, confidential employees, and persons designated by the public school employer to act in a negotiating capacity as specified in subsection (H) (1) of this section." Sec. (A)(3). See A above.

"Management personnel" is defined as including "persons engaged predominately in executive and managerial functions, as determined by the public school employer in negotiations with those employee organizations which request negotiation thereon." Sec. (A)(4).

"Confidential employee" is defined to mean "as determined by the public school employer in negotiation with employee organizations requesting negotiation thereon, includes any individual whose employment responsibilities require knowledge of the public school employer's posture in the collective negotiation process." Sec. (A)(5).

D. Separate Units Prescribed

2. Supervisory: See A above.

"Supervisory employee" is defined as "as determined by the public school employer in negotiation with employee organizations requesting negotiation thereon, includes any person who responsibly directs the work of other employees." Sec. (A)(6).

MASSACHUSETTS

1. State and local government employees law

A. Appropriate Unit: The labor relations commission "shall prescribe rules and regulations and establish procedures for the determination of appropriate bargaining units which shall be consistent with the purposes of providing for stable and continuing labor relations, giving due regard to such criteria as

community of interest, efficiency of operations and effective dealings, and to safeguarding the rights of employees to effective representation." Sec. 3.

B. Employees Excluded: By definition, "public employee" excludes "elected officials, appointed officials, members of any board or commission, representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer, and other managerial employees or confidential employees, and members of the militia or national guard and employees of the commission, and officers and employees within the departments of the state secretary, state treasurer, state auditor and attorney general. Employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, or (b) assist to a substantial degree in the preparation for or the conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration. Employees shall be designated as confidential employees only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under this chapter." Sec. 1.

C. Criteria: See A above.

D. Separate Units

1. Professional: "No unit shall include both professional and nonprofessional employees unless a majority of such professional employees votes for inclusion in such unit; provided, however, that in any fire department, or any department in whole or in part engaging in, or having the responsibility of, fire fighting, no uniformed member of the department, subordinate to a fire commission, fire commissioner, public safety director, board of engineers or chief of department shall be classified as a professional, confidential, executive, administrative or other managerial employee for the purpose of this chapter." Sec. 3.

"Professional employee" is defined as "any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and (iv) requiring knowledge of an advanced type in a field of

science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes." Sec. 1.

4. Police: "The appropriate bargaining unit in the case of the uniformed branch of the division of state police for officers subordinate to the rank of lieutenant shall be composed of members of the state police holding and in the rank of staff sergeant, corporal, policewoman and trooper." Sec. 3.

MICHIGAN

1. Public Employment Relations Act (PERA)

A. Appropriate Unit: The Employment Relations Commission decides in each case "in order to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939: Provided, That in any fire department, or any department, in whole or part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor." Sec. 423.213

Section 9e of the Michigan Mediation Act reads: "The board [i.e., employment relations commission], after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: Provided, however, That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice as a unit for collective bargaining, the board may adopt such unit."

Note: The Michigan Supreme Court upheld MERC's policy of permitting supervisory units in *Hillsdale Community Schools v. Labor Mediation Board*, 24 Mich. App. 36, 179 N.W. 2d 661 (1970); appeal denied, 384 Mich. 779, 179 N.W. 2d 661 (1970).

B. Employees Excluded: No exclusions are specified in the statute but in its determinations the commission has excluded managerial and confidential employees.

MINNESOTA

1. Public Employment Labor Relations Act (PELRA)

A. Appropriate Unit: Determined by the director of mediation services. Sec. 179.71(3).

The law authorizes the PERB "to hear and decide appeals from determinations of the director relating to the appropriateness of a unit" and "to hear and decide issues relating to the meaning of the terms 'supervisory employee', 'confidential employee', 'essential employee' or 'professional employee'." Sec. 179.72(3). It should be noted that the law distinguishes "essential employees" from employees not considered essential employees. See D7 below.

"Appropriate unit" is defined as "a unit of employees excluding supervisory employees, confidential employees and principals and assistant principals...and in the case of school districts, the term means all the teachers in the district." Sec. 179.63(17). See also E2, 4 and 5 below.

In the matter of the inclusion or exclusion of supervisory employees, the statute provides that "the director [of mediation services] must find that an employee may perform or effectively recommend a majority of those functions referred to in Sec. 179.63, subdivisions 9 or 9a [see directly below], before an employee may be excluded as supervisory. However, in every case the administrative head, and his assistant, of a municipality, municipal utility, police or fire department shall be considered a supervisory employee." Sec. 179.71(3).

A "supervisory employee" among non-essential employees is defined as "any person having authority in the interest of employer to hire, transfer, suspend, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or adjust their grievances on behalf of the employer, or to effectively recommend any of the aforesaid actions, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. Any determination of 'supervisory employee' may be appealed to the public employment relations board." Sec. 179.63(9).

Among "essential employees" a "supervisory employee" is defined as "the administrative head and his assistant of a municipality, municipal

utility, police or fire department, or any person having authority in the interests of the employer to hire, transfer, suspend, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or adjust their grievances on behalf of the employer, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but requires the use of independent judgment. Any determination of 'supervisory employee' may be appealed to the public employment relations board." Sec. 179.63(9a).

Professional employees, which by definition includes teachers, are granted the right to meet and confer with public employers regarding policies and matters not included in the definition of "terms and conditions of employment." Sec. 179.65(3).

"Professional employee" is defined as "(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes;

"(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

"(c) a teacher shall be deemed to be a professional employee." Sec. 179.63(10).

B. Employees Excluded: The definition of "public employee" excludes "(a) elected public officials; (b) election officers; (c) commissioned or enlisted personnel of the Minnesota national guard; (d) emergency employees who are employed for emergency work caused by natural disaster; (e) part time employees whose service does not exceed 14 hours per week; (f) employees who hold positions of a basically temporary or seasonal character for a period not in excess of 100 working days in any calendar year; (g) employees of charitable hospitals as defined by section 179.35, subdivision 3." Sec. 179.63(7).

The definition of "teacher" excludes a superintendent or assistant superintendent of schools. Sec. 179.63(13).

C. Criteria: In determining the appropriate unit, the director of mediation services shall consider "along with other relevant factors, the principles and the coverage of uniform comprehensive position classification and compensation plans of the employees, involvement of professions and skilled crafts and other occupational classifications, relevant administrative and supervisory levels of authority, geographical location, and the recommendation of the parties, and shall place particular importance upon the history and extent of organizations and the desires of the petitioning employee representatives. Sec. 179.71(3).

However, the director "shall define appropriate units of state employees as all the employees under the same appointing authority except where professional, geographical or other considerations affecting employment relations clearly require appropriate units of some other composition." Sec. 179.74(4).

D. Separate Units

7. Other (Essential employees): The law prohibits the director of mediation services from designating an appropriate unit which includes essential employees with employees not considered essential employees. Sec. 179.71(3).

"Essential employee" is defined as any person within the definition of public employee "whose employment duties involve work or services essential to the health or safety of the public and the withholding of such services would create a clear and present danger to the health or safety of the public." Sec. 179.63(11).

E. Other Limitations

2. Supervisory: "Supervisory and confidential employees, principals and assistant principals may form their own organizations. An employer shall extend exclusive recognition to a representative of or an organization of supervisory or confidential employees, or principals and assistant principals, for the purpose of negotiating terms or conditions of employment, in accordance with all other provisions of this act, as though they were essential employees." Sec. 179.65(6). See A above.

4. School Administrators: See A and E2 above.

"Principal" and "assistant principal" means "any person so certificated by the state department of education who devotes more than 50 percent of his time to administrative or supervisory duties." Sec. 179.63(14).

5. Other (Confidential employees): See A and E2 above.

"Confidential employee" means "any employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in meeting and negotiating or who actively participates in the meeting and negotiating on behalf of the public employer." Sec. 179.63(8).

MISSOURI

1. State and local government employees and firefighters law

A. Appropriate Unit: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation. In the event that the appropriate administrative body or any of the bargaining units shall be aggrieved by the decision of the State Board of Mediation an appeal may be had to the circuit court of the county where the administrative body is located or in the Circuit Court of Cole County. The State Board of Mediation shall use the services of the State Hearing Officer in all contested cases." Sec. 105.525.

The statute defines "appropriate unit" as "A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employes concerned." Sec. 105.500(3).

B. Employees Excluded: Police, deputy sheriffs, State Highway Patrolmen, National Guard and all teachers of all schools, colleges and universities of any public body are excluded. Sec. 105.510.

C. Criteria: See A above.

MONTANA

1. Nurses law

A. Appropriate Unit: "(1) The composition of an appropriate unit in a health care facility for purposes of this law, may be determined by mutual consent between such facility and the employees thereof. (2) In the event no such mutual consent is available, then either the facility, or representatives of employees may apply to the state board of health and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit." Sec. 44-2204.

"Appropriate unit" is defined as "a homogenous group of employees of a health care facility having similar duties and qualifications, determined by section 4 of this act." Sec. 44-2202(1)

B. Employees Excluded: The definition of "employee" does not include "a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order." Sec. 44-2202(2)

C. Criteria: "In determining such appropriate unit professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment among other relevant factors, in determining an appropriate unit." Sec. 44-2204(3)

D. Separate Units

1. Professional: See C above.

2. State and local government employees law

A. Appropriate Unit: "...the board [of personnel appeals] or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees." Sec. 59-1607(2)

"Appropriate unit" is defined as "a group of public employees banded together for collective bargaining purposes as designated by the board." Sec. 59-1602(11)

B. Employees Excluded: By definition "public employees" excludes "elected officials, persons directly appointed by the governor, supervisory employees and management officials (as defined in subsection (3) and (4) below) or members of any state board or commission who serve the state intermittently, school district clerks and school administrators, registered professional nurses performing service for health care facilities, professional engineers and engineers in training, and includes any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action;..." Sec. 59-1602(2).

"Supervisory employee" is defined as "any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall,

promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;...." Sec. 59-1602(3).

"Management officials" is defined as "representatives of management having authority to act for the agency on any matters relating to the implementation of agency policy;...." Sec. 59-1602(4).

C. Criteria: See A above.

NEBRASKA

1. State and local government employees law

A. Appropriate Unit: Determined by the Court of Industrial Relations. Sec. 48-816.

B. Employees Excluded: The definition of employer excludes the National Guard or state militia. Sec. 48-801(4). In addition, police chiefs, fire chiefs and their immediate assistant(s) are not included in basic police and firefighter units. See D4 below.

C. Criteria: "The court shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination the court shall consider established bargaining units and established policies of the employer. It shall be presumed, in the case of governmental subdivisions, such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of employees of less than departmental size shall not be appropriate." Sec. 48-816.

D. Separate Units

4. Police: "All firemen and policemen employed in the fire department or police department of any municipal corporation in a position or classification subordinate to the chief of the department and his immediate assistant or assistants holding authority subordinate only to the chief, shall be presumed to have a community of interest and may be included in a single negotiating unit represented by an employee organization for the purposes of this act. Public employers shall be required to recognize an employee's negotiating unit composed of firemen and policemen holding positions or classifications subordinate to the Chief of the fire department or police department and his

immediate assistant or assistants holding authority subordinate only to the chief when such negotiating unit is designated or elected by employees in the unit." Sec. 48.816.

5. Firefighters: See D4 above.

2. Teachers' Professional Negotiation Act

A. Appropriate Unit: Section 79-1287 merely mentions that it is the state policy "to promote the improvement of personnel management and relations with certificated employees *within the public school districts* of the state by providing a uniform basis for recognizing the right of public school certificated employees to join organizations of their own choice in class III, IV and V school districts." [Emphasis supplied.]

NEVADA

1. Local Government Employee-Management Relations Act (LGEMRA)

A. Appropriate Unit: "Each local government employer which has recognized one or more employee organizations shall determine, after consultation with such recognized organization or organizations, which group or groups of its employees constitute an appropriate unit or units for negotiating purposes." Sec. 288.170 1.

Employee organizations aggrieved by a determination of a negotiating unit may appeal to the local government employee-management relations board. Subject to judicial review, decisions of the board are binding upon the parties. Sec. 288.170 2.

B. Employees Excluded: Confidential employees are excluded from negotiating units. Sec. 288.170 1.

The law defines "confidential employee" as "an employee who is privy to decisions of management affecting employee relations, including all employees of the personnel department or its equivalent." Sec. 288.035.

C. Criteria: The statute designates "community of interest among employees concerned" as the "primary criterion" for unit determination. Sec.288.170 1.

D. Separate Units

2. Supervisory: The law states that a supervisory employee "shall not be a member of the same negotiating unit as the employees under his direction. Furthermore, "Any dispute between the parties as to

whether an employee is a supervisor shall be submitted to the board." Sec. 288.170 1.

"Supervisory employee" is defined as "any individual having the authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees ..." Sec. 288.075.

3. School Administrators: "A principal, assistant principal or other school administrator below the rank of superintendent, assc[illegible] superintendent or assistant superintendent shall not be a membe[illegible]e same negotiating unit with public school teachers unless the school district employs fewer than five principals but may join with other officials of the same specified ranks to negotiate as a separate negotiating unit." Sec. 288.170 1.

7. Other (Department heads and administrative employees): The law states that they shall not be members of the same negotiating unit as the employees under their direction. Sec. 288.170 1.

"Administrative employee" is defined as "any employee whose primary duties consist of work directly related to management policies, who customarily exercises discretion and independent judgment and regularly assists an executive. In addition, it includes the chief administrative officer, his deputy and immediate assistants, department heads, their deputies and immediate assistants, attorneys, appointed officials and others who are primarily responsible for formulating and administering management policy and programs." Sec. 288.025.

E. Other Limitations

3. Police: Section 288.140 3 states: "A police officer, sheriff, deputy sheriff or other law enforcement officer may be a member of an employee organization only if such employee organization is composed exclusively of law enforcement officers."

NEW HAMPSHIRE

1. State government employees law

A. Appropriate Unit: "The board [public employee labor relations board] or its designee shall determine the appropriate bargaining unit and shall certify the exclusive representative thereof when petitioned to do so under RSA 273-A:10. In making its determination the board should take into consideration the principle of community of interest. The community of interest may be exhibited by one or more of the following criteria, although it is not

limited to such; a) Employees with the same conditions of employment; b) Employees with a history of workable and acceptable collective negotiations; c) Employees in the same historic craft or profession; d) Employees functioning within the same organizational unit. In no case shall the board certify a bargaining unit of less than 10 employees with the same community of interest." Sec. 273-A:8 I.

In addition, Sec. 273-A:8 II, states that "the board may certify a bargaining unit composed of professional and non-professional employees only if both the professional and non-professional employees, voting separately, vote to join the proposed bargaining unit. Persons exercising supervisory authority involving the significant exercise of discretion may not belong to the same bargaining unit as the employees they supervise."

Furthermore, "In the event the bargaining unit is determined by the board's designee, the decision may be appealed to the board for final determination." Sec. 273-A:8 III.

B. Employees Excluded: By definition, "public employee" excludes: (a) Persons elected by popular vote; (b) Persons appointed to office by the chief executive or legislative body of the public employer; (c) Persons whose duties imply a confidential relationship to the public employer; or (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed." Sec. 273-A:1 IX.

C. Criteria: See A above.

D. Separate Units:

1. Professional: See A above.

"Professional employee" is defined as "any employee engaged in work predominantly intellectual and varied in character, involving the consistent exercise of discretion and judgment, and requiring knowledge in a discipline customarily acquired in a formal program of advanced study." Sec. 273-A:1 VIII.

2. Supervisory: See A above.

NEW JERSEY

1. Employer-Employee Relations Act (EERA)

A. Appropriate Unit: In the event of a dispute, the Division of Public Employment Relations "shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit or, (3) both craft and noncraft employees unless a majority of such craft employees vote for inclusion in such unit." Sec. 34:13A-6(d)

B. Employees Excluded: As defined, "employee" excludes "elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions, provided that in any school district this shall exclude only the superintendent of schools or other chief administrator of the district." Sec. 34:13A-3(d)

Sec. 34:13A-5.3 denies managerial executives the right to form, join or assist any employee organization

C. Criteria: Sec. 34:13A-5.3 mentions that the "negotiating unit shall be defined with due regard for the community of interest among the employees concerned ..."

D. Separate units

1. Professional: See A above.

2. Supervisory: See A above.

7. Other (Craft employees): See A above.

E. Other Limitations

2. Supervisory: The law provides that "except where established practice, prior agreement or special circumstances dictate the contrary," supervisors—"having the power to hire, discharge, discipline, or to effectively recommend the same"—are denied "the right to be represented in collective negotiations by an employee organization that admits nonsupervisory personnel to membership," and further provides that "the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations..." Sec. 34:13A-5.3.

3. Police: Sec. 34:13A-5.3 mentions that "except where established practice, prior agreement, or special circumstances dictate the contrary no policeman shall have the right to join an employee organization that admits employees other than policemen to membership.

NEW MEXICO

1. State Personnel Board regulations

A. Appropriate Unit: The State Personnel Board is authorized to approve, amend or reject a proposed appropriate bargaining unit. "In determining the appropriateness of bargaining units, the board shall consider all relevant factors including but not limited to: a) the community of interest of the employees; b) the desires of the employees and the agency; c) the effect of the unit on the efficient operation of the agency; d) the administrative structure of the agency; and e) unnecessary fragmentation. The board shall not approve any appropriate bargaining unit which: a) contains employees of more than one agency; b) includes supervisors or confidential employees; c) includes guards together with other employees; d) includes temporary, temporary part-time or seasonal employees; or e) is not otherwise appropriate for collective bargaining." Sec. 6 b.

In addition, Sec. 6 d provides that "whenever the board deletes a classification specification included in an appropriate bargaining unit, the director shall so notify the labor organization and the agency."

Furthermore, "Upon petition to the board, an appropriate bargaining unit may be clarified or amended. Such petition may be filed by the agency or the labor organization and must contain the proposed clarification or amendment and justification for the proposed clarification or amendment." Sec. 6 e.

"Appropriate bargaining unit" is defined as "a group of employees designated by the board to be appropriate for the purpose of collective bargaining;..." Sec. 2 (b).

B. Employees Excluded: The definition of "employee" excludes "supervisors, confidential employees and individuals in a temporary, temporary part-time or seasonal status;..." Sec. 2 h.

"Supervisor" is defined as "any individual having authority in the interest of the agency, to hire, transfer, layoff, recall, promote, dismiss, suspend, demote, reward, or discipline other employees, or the responsibility to assign work and to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;..." Sec. 3 p.

"Confidential employee" is defined as "any employee who, in the regular course of his duties, possesses or has access to information relating to the formulation, execution or review of the agency's labor relations policies;..." Sec. 2 f.

C. Criteria: See A above.

D. Separate Units Prescribed

4. Guards: See A above.

"Guard" is defined as "an employee assigned to enforce against employees and other individuals rules to protect agency property or the safety of individuals on agency premises, or to maintain law and order in areas of facilities under State control;..." Sec. 2 k.

E. Other Limitations

2. Supervisory: "Paragraph (a) of this Section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, confidential employee or an individual in a temporary, temporary part-time or seasonal status. Sec. 3 b

NEW YORK

1. Taylor Law

A Appropriate Unit: The law grants local governments, acting through legislative bodies, the authority "to establish procedures after consultation with interested employee organizations and administrators of public services, to resolve disputes concerning the representation status of employee organizations of employees of such government." Sec. 206 1.

In the absence of such local procedures, however, the PERB shall define the appropriate negotiating unit for purposes of resolving disputes concerning representation status. Sec. 207.

B Employees Excluded: The definition of "public employee" excludes "persons holding positions by appointment or employment in the organized militia of the state and persons who may reasonably be designated from time to time as managerial or confidential upon application of the public employer to the appropriate board..." Sec. 201 7.

Section 201 7 also provides: "Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may

reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

"(b) For the purposes of this article, assistant attorneys general shall be designated managerial employees and confidential investigators employed in the department of law shall be designated confidential employees."

Persons appointed or employed in the service of the PERB are excluded from coverage under the law. Sec. 201.5.

C. Criteria: The law sets forth the following standards for the defining of units: "(a) the definition of the unit shall correspond to community of interest among the employees to be included in the unit; (b) the officials of government at the level of the unit shall have the power to agree, or to make effective recommendations to other administrative authority or the legislative body with respect to, the terms and conditions of employment upon which the employees desire to negotiate; and (c) the unit shall be compatible with the joint responsibilities of the public employer and public employees to serve the public." Sec. 207.1.

E. Other Limitations

5. Other (Management employees; confidential employees): The law excludes managerial and confidential employees, and furthermore provides that "No management or confidential employee...shall hold office in or be a member of any employee organization which is or seeks to become...the certified or recognized representative of the public employees employed by the public employer of such managerial or confidential employee." Sec. 214.

2. New York City Collective Bargaining Law (CBL)

A. Appropriate Unit: The law authorizes the board of certification "to make final determinations of the units appropriate for purposes of collective bargaining." Sec. 1173-5.0 b 1.

B. Employees Excluded: Section 1173-4.1 provides that "neither managerial nor confidential employees shall constitute or be included in any bargaining unit, nor shall they have the right to bargain collectively."

C. Criteria: The law states that the units determined appropriate "shall be such

as shall assure to public employees the fullest freedom of exercising the rights granted hereunder and under executive orders, consistent with the efficient operation of the public service, and sound labor relations, provided that in any case involving a petition for certification where supervisory or professional employees petition to be represented for purposes of collective bargaining separate and apart from non-supervisory or non-professional employees, or where a petition for certification has been filed requesting a unit of supervisory and non-supervisory or a unit of professional and non-professional employees and the public employer objects thereto, the board of certification shall not include such supervisory or professional employees in a bargaining unit which includes non-supervisory or non-professional employees respectively unless a majority of the supervisory or professional employees voting in an election vote in favor thereof...." Sec. 1173-5.0 b (1).

D. Separate Units

1. Professional: See C above.

2. Supervisory: See C above.

E. Other Limitations

3. Police: Section 1173-10.0 states: "No organization seeking or claiming to represent members of the police force of the police department shall be certified if such organization (i) admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than members of the police force of the police department, or (ii) advocates the right to strike."

NORTH DAKOTA

2. Teachers law

A. Appropriate Unit: "Any group of teachers, or administrators, employed in a public school district may determine an appropriate negotiating unit by filing with the school board a description of the grouping of jobs or positions which constitute the unit claimed to be appropriate. Upon receipt of such determination, the school board shall accept or reject the proposed appropriate negotiating unit. After the school board has accepted the appropriate negotiating unit, the teachers within such unit may designate or select a representative organization ...." Sec. 15-38.1-10.

The statute defines "appropriate negotiating unit" as a group of teachers or administrators "having common interests, common problems, a common employer, or a history of common representation which warrants that group

being represented by a single representative organization in negotiations with a school board...." Sec. 15-38.1-02, -04 and -05.

C. Criteria: See above.

D. Separate Units

3. School Administrators: The statute defines an appropriate unit for administrators. See A above.

" 'Administrator' means and includes all public school employees employed primarily for administration of the school or schools of a school district and devoting at least fifty percent of their time in any one year to the duties of administration of the school or schools of a school district." Sec. 15-38.1-02 2.

OKLAHOMA

1. Firefighters' and Policemen's Arbitration Law (FPAL)

A. Appropriate Unit: The Public Employees Relations Board "shall decide in each case before it in which the issue is raised the unit appropriate for the purposes of collective bargaining...." Sec. 548.4 E.

B. Employees Excluded: The definition of "firefighters and policemen" does not include "the chief of police and an administrative assistant and the chief of the fire department and an administrative assistant. The administrative assistant shall be that person so designated by the chief of police department and that person so designated by the chief of the fire department." Sec.548.3 1.

As defined, "municipal employees" excludes "2a. Those persons classed as legislative, judicial or supervisory employees; 2b. Elected and top management appointive officials; 2c. Certain categories of confidential employees including those responsible for administering the provisions of this act as a part of their official duties. .." Sec. 548.3 2.

However, Section 548.4 provides: "Supervisory and professional municipal employees may form, join and participate in the activities of employee organizations, provided such organizations do not include non-supervisory employees. The corporate authority shall not extend formal recognition to a supervisory or professional organization for the purpose of meeting and conferring with respect to grievances and conditions of employment, but may consult or otherwise communicate with such an organization on appropriate matters. The corporate authority shall determine whether an individual is to be considered a supervisory, professional or confidential municipal employee for meet and confer purposes, subject to appeal to the Board."

"Supervisory employee" is defined as "any municipal employee having

authority in the interest of employer, 3a. To hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or 3b. Responsibility to direct them, or 3c. To adjust their grievances, or 3d. Effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 548.3 3.

C. Criteria: In determining the appropriate unit, the Board "shall consider such factors as community of interest, wages, hours and other working conditions of the employees involved, the history of collective bargaining, and the desires of the employees." Sec. 548.4 E.

E. Other Limitations

1. Professional: See B above.

2. Supervisory: See B above.

2. Teachers law

A. Appropriate Unit: Section 509.2 only mentions that the members of the professional organization seeking recognition as the representative "shall be professional educators [defined elsewhere as "certified public school teachers"] employed by and serving *in the district* they propose to represent. ..." [Emphasis supplied.]

D. Separate Units

7. Other (Nonprofessional educator employees): Section 509.5 states that "All employees of a school district other than those employees who are professional educators shall likewise be eligible to designate an organization composed exclusively of such employees to represent them in negotiating...."

OREGON

1. State and local government employees law

A. Appropriate Unit: If a questionof representation exists, the Public Employe Relations Board "shall...upon application of a public employer, public employe or a labor organization, designate the appropriate bargaining unit.... The board may determine a unit to be the appropriate unit in a particular case even though some other unit might also be appropriate." Sec.243.682(1).

"Appropriate bargaining unit" is defined as "the unit designated by the board to be appropriate for the purpose of collective bargaining." Sec. 243.650(1).

B Employees Excluded: The definition of "public employe" does not include "elected officials, persons appointed to serve on boards or commissions or persons who are 'confidential employes' or 'supervisory employes.'" Sec. 243.650(17).

"Confidential employe" means "one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining." Sec. 243.650(6).

"Supervisory employe" means "any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or having responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. However, the exercise of any function of authority enumerated in this subsection shall not necessarily require the conclusion that the individual so exercising that function is a supervisor within the meaning of this 1973 Act." Sec. 243.650(14).

The definition of "public employer" includes "any individual designated by the public employer to act in its interests in dealing with public employes." Sec. 243.650(18).

C. Criteria: In making its determination the board shall consider "such factors as community of interest, wages, hours and other working conditions of the employes involved, the history of collective bargaining, and the desires of the employes." Sec. 243.682(1).

2. Portland city ordinance

A. Appropriate Unit: In the city council hearing on a petition for recognition, "if the petition proposes a bargaining unit not theretofore recognized by the council or designated by the State Board, the council first shall consider whether the proposed bargaining unit is appropriate. The council may either recognize the proposed bargaining unit as being appropriate or direct the city auditor to transmit the matter to the State Board for determination. However, no recognition may be given a proposed bargaining unit under this section when:

"(1) An objection to the proposed bargaining unit is made by a city employee in that unit or by an officer of a labor organization that represents two or more city employees in that unit, whether the objection is in writing, signed and filed with the city auditor prior to the hearing or is submitted to the council orally or in writing at the hearing; or

"(2) A petition for recognition is filed...by another labor organization and the petition describes a bargaining unit that would include all or part of

the proposed bargaining unit being considered by the council." Sec. 3-2208

When the matter of a petition for recognition is transmitted to the State Board, the board shall conduct a hearing on whether a proposed bargaining unit is appropriate and make its determination. Sec. 3-2212(a).

"In determining whether a proposed bargaining unit is appropriate, the State Board may consider evidence presented by any petitioner or other labor organization, by any city employee in a proposed bargaining unit, and by persons authorized to speak on behalf of the council, as to the community of interest of city employees in a proposed unit, including compensation, similarity of job duties, common supervision and common skills, educational requirements, job location, and bargaining history. In addition, the board may conduct elections...to determine the desire of employees in any proposed bargaining unit, and may hear and determine any objections to the report of the employee relations officer relating to a petition for recognition." Sec. 3-2212(b).

"A bargaining unit shall continue to be recognized as such for the purpose of collective bargaining for not less than one year and until that unit is modified or rejected in subsequent proceedings under this chapter. Nothing in this chapter shall be construed to prevent the council from creating or abolishing classifications or positions in the city service, except that new classifications with interests or job functions similar to those of a classification in an existing bargaining unit shall be included in that unit." Sec. 3-2213.

"Bargaining unit" means "a distinct and homogenous group of city employees recognized by the city council, or designated by the State Board, as appropriate for representation by a labor organization for the purpose of collective bargaining. The group may include all city employees, city employees in a particular department, bureau or office, or city employees in a particular trade, craft or occupation, whether for the city as a whole or any part thereof. ." Sec. 3-2201(2)

"State Board" includes "the Bureau of Labor of Oregon, the Commissioner of Labor, the Public Employee Relations Board, the State Conciliation Service, and any ad hoc committee of persons appointed by the Commissioner of Labor or the Public Employee Relations Board who are knowledgeable in labor relations." Sec. 3-2201(7).

B Employees Excluded: The definition of "city employees" excludes "(A) Employees in the city auditor's office whose assignment includes custody of, or control over, confidential information on city employees, (B) Supervisory personnel having authority in the exercise of their independent judgment, to effectively recommend the employment, transfer, suspension, lay off, promotion, demotion, discharge or assignment of other employees, (C) Employees on a nonpay status on the regular city payroll, (D) Personnel in the offices of the mayor (including the budget and employee relations offices), city commissioners, city attorney and civil service board...." Sec. 3-2201(3).

C. Criteria: See A above.

3. Eugene city ordinance

A. Appropriate Unit: The ordinance defines "bargaining unit" as "A unit certified by the Public Employees Relations Board as appropriate but which shall not include supervisory employees or employees who occupy a position of a confidential nature relating to employee relations. Professional employees will not normally be considered for inclusion in a bargaining unit consisting of other employees unless they so choose by a majority vote." Sec. 2.

B. Employees Excluded: Supervisory and confidential employees are excluded from bargaining units. Sec. 2.

"Supervisory employee" is defined as "Any individual, having authority, in the interest of the city to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 2.

D. Separate Units

1. Professional: "Professional employees will not normally be considered for inclusion in a bargaining unit consisting of other employees unless they so choose by a majority vote." Sec. 2.

"Professional employee" is defined as "(a) A city employee engaged in work (1) predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; (2) involving the consistent exercise of discretion and judgment in its performance; (3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (4) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or,

"(b) An employee who (1) has completed the courses of specialized instruction and study described in subparagraph (a)(4) above; and (2) is performing related work under the supervision of a professional person to qualify himself as a professional employee as defined in paragraph (a) above." Sec. 2.

PENNSYLVANIA

1. Public Employe Relations Act (PERA)

A. Appropriate Unit: The Labor Relations Board "shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof." Sec. 1101.604.

B. Employees Excluded: By definition "public employe" excludes "elected officials, appointees of the Governor with the advice and consent of the Senate as required by law, management level employes, confidential employes, clergymen or other persons in a religious profession, employes or personnel at church offices or facilities when utilized primarily for religious purposes" and policemen and firemen. Sec. 1101.301(2).

"Management level employe" means "any individual who is involved directly in the determination of policy or who responsibly directs the implementation thereof and shall include all employes above the first level of supervision." Sec. 1101.301(16).

"Confidential employe" means "any employe who works: (i) in the personnel offices of a public employer and has access to information subject to use by the public employer in collective bargaining; or (ii) in a close continuing relationship with public officers or representatives associated with collective bargaining on behalf of the employer." Sec. 1101.301(13).

C. Criteria: "In determining the appropriateness of the unit, the board shall:

"(1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over-fragmentization.

"(2) Not decide that any unit is appropriate if such unit includes both professional and nonprofessional employes, unless a majority of such professional employes vote for inclusion in such unit.

"(3) Not permit guards at prisons and mental hospitals, employes directly involved with and necessary to the functioning of the courts of this Commonwealth, or any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employes, each may form separate homogenous employe organizations with the proviso that organizations of the latter designated employe group may not be affiliated with any other organization representing or including as members, persons outside of the organization's classification.

"(4) Take into consideration that when the Commonwealth is the employer, it will be bargaining on a Statewide basis unless issues involve working conditions peculiar to a given governmental employment locale. This section, however, shall not be deemed to prohibit multi-unit bargaining.

"(5) Not permit employes at the first level of supervision to be included with any other units of public employes but shall permit them to form their own separate homogenous units. In determining supervisory status the board may take into consideration the extent of which supervisory and non-supervisory functions are performed." Sec. 1101.604.

D. Separate Units

1. Professional: See C above.

"Professional employe" is defined as "any employe whose work: (i) is predominantly intellectual and varied in character; (ii) requires consistent exercise of discretion and judgment; (iii) requires knowledge of an advanced nature in the field of science or learning customarily acquired by specialized study in an institution of higher learning or its equivalent; and (iv) is of such character that the output or result accomplished cannot be standardized in relation to a given period of time." Sec. 1101.301(7).

2. Supervisory: See C above.

However, Section 1101.704 provides that "Public employers shall not be required to bargain with units of first level supervisors or their representatives but shall be required to meet and discuss with first level supervisors or their representatives, on matters deemed to be bargainable for other public employes covered by this act."

"First level supervisor" is defined as "the lowest level at which an employe functions as a supervisor." Sec. 1101.301(19).

"Supervisor" is defined as "any individual having authority in the interests of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employes or responsibly to direct them or adjust their grievances; or to substantial degree effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely routine or clerical in nature but calls for the use of independent judgment." Sec.1101.301(6).

4. Guards: See C above.

7. Other (Court employes): See C above.

E. Other Limitations

3. Guards: See C above.

RHODE ISLAND

1. State government employees law

A. Appropriate Unit: Organizations representing state employees are subject to provisions of the State Labor Relations Act, Section 28-7-15 of which provides that the state labor relations board "shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this chapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or any other unit; provided, however, that in any case where the majority of employees of a particular craft shall so decide the board shall designate such craft as a unit appropriate for the purpose of collective bargaining."

2. Municipal Employees' Arbitration Act

A. Appropriate Unit: Determined by the state labor relations board. Sec. 28-9.4-6.

B. Employees Excluded: The definition of "municipal employee" excludes "elected officials, administrative officials, board and commission members, certified teachers, policemen, firefighters, part-time employees who work less than twenty hours per week, and persons in supervision positions. The state labor relations board shall, whenever requested to do so, in each instance, determine who are supervisors and administrative employees." Sec 28-9.4-2(2).

3. School Teachers' Arbitration Act

A. Appropriate Unit: The statute only mentions that "The association or labor organization selected by the certified public school teachers in the public school system in any city, town, or regional school district, shall be recognized by the school committee of such city, town, or district, as the sole and exclusive negotiating or bargaining agent for all of the said public school teachers *of the city, town, or regional school district*...." [Emphasis supplied.] Sec. 28-9.3-3.

B. Employees Excluded: Superintendents, assistant superintendents, principals and assistant principals are excluded from provisions of the law. Sec.28-9.3-2.

4. Fire Fighters' Arbitration Act

A. Appropriate Unit: The law merely states that "The labor organization selected by the majority of the firefighters in any city or town shall be recognized by such city or town as the sole and exclusive bargaining agent for all of the

members *of the city or town fire department*...." [Emphasis supplied] Sec. 28-9.1-5.

5. **Policemen's Arbitration Act (PAA)**

A. Appropriate Unit: The law merely provides that "The organization selected by the majority of the policemen in any city or town shall be recognized by such city or town as the sole and exclusive bargaining agent for all of the policemen *of the city or town police department*..." [Emphasis supplied.] Sec. 28-9.2-5.

6. **Providence City school system certified administrators law**

A. Appropriate Unit: The law merely provides that the certified administrators "shall have the right to negotiate professionally and to bargain collectively with their respective school committee and to be represented by an association or labor organization in such negotiation or collective bargaining concerning hours, salary, fringe benefits pertaining specifically to members of the bargaining unit as defined." Sec. 28-9.5-1.

B. Employees Excluded: "Superintendents and assistant superintendents are excluded from the provisions of this chapter. Certified administrators below the rank of superintendent or assistant superintendent shall not negotiate professionally or bargain collectively on behalf of the city." Sec. 28-9.5-1.

SOUTH DAKOTA

1. **State and local government employees and teachers law**

A. Appropriate Unit: The law states that "when a question concerning the designation of a representation unit is raised by the government agency, labor or employee organization, or employees, the labor commissioner or any person designated by him shall, at the request of the parties, investigate such question and, after a hearing if requested by any party, rule on the definition of the appropriate representation unit." Sec. 3-18-4.

C. Criteria: "In defining the unit, the labor commissioner shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the principles and the coverage of uniform comprehensive position classification and compensation plans in the governmental agency, the history and extent of organization, occupational classification, administrative and supervisory levels of authority, geographical location, and the recommendation of the parties." Sec. 3-18-4.

TEXAS

1. Fire and Police Employee Relations Act (FPERA)

A. Appropriate Unit: The statute mentions that the permanent, paid firefighters of a fire department and the sworn, certified, full-time, paid policemen of a police department within the same city, town, or other political subdivision shall constitute separate collective bargaining units. Sec. 6(a, b and d).

B. Employees Excluded: Police and fire department chiefs are excluded from coverage.

D. Separate Units Prescribed

4. Police: See A above.

5. Firefighters: See A above.

UTAH

1. Fire Fighters' Negotiation Act (FFNA)

A. Appropriate Unit: The law merely states "The organization selected by a majority of fire fighters in an appropriate bargaining unit shall act as the exclusive bargaining representative for all members of the department until recognition of such bargaining representative is withdrawn by a vote of a majority of the fire fighters in the department." Sec. 34-20a-4.

B. Employees Excluded: "No negotiating team of the established bargaining unit is appropriate which includes any fire chief, assistant chief, battalion or deputy chief, captain or lieutenant." Sec. 34-20a-4.

VERMONT

1. State Employee Labor Relations Act (SELRA)

A. Appropriate Unit: The state employee relations board "shall decide the unit appropriate for the purpose of collective bargaining in each case and those employees to be included therein...." Sec. 927(a)

In addition, as part of the unit determination process, the statute provides for a secret ballot election to ascertain the wishes of the employees regarding the appropriate unit. Sec. 941(e) states: "Whenever, as a result of a petition and an appropriate hearing the board finds substantial interest among employees in forming a bargaining unit, a secret ballot election shall be conducted

by the board to be taken in such manner as to show separately the wishes of the employees in the voting group involved as to the determination of the collective bargaining unit, including the right not to be organized. In order for a collective bargaining unit to be recognized and certified by the Board, there must be at least a fifty-one percent affirmative vote of all employees within such proposed bargaining unit."

The statute defines "collective bargaining unit" as "the employees of an employer being either all of the employees, the members of a department or agency or such other unit or units as the board may determine are appropriate to best represent the interest of employees." Sec. 902(3).

B. Employees Excluded: The definition of "state employees" excludes an individual: employed in the lieutenant governor's office; employed as a certain legal assistant to the attorney general; employed as a certain department or agency head or deputy officer, as a "head of an institution or as a division director in the department of administration, and similar positions in Vermont state colleges"; employed in a management level position; employed in the classified service as a private secretary; employed in the department of personnel; "employed in the department of budget and management as a budget and management analyst, a revenue research analyst, director of budget and management operations, director of program formulation and evaluation, and director of state information systems";and "determined after hearing by the board, upon the petition of any individual desiring exclusion of the employer, or of a collective bargaining unit, to be in a position which is so inconsistent with the spirit and intent of this chapter as to warrant exclusion." Sec. 902(5). Employees of the legislative and judicial branches of government are also excluded. Sec. 902(7).

"Management positions" are defined as "those positions in one of the following four levels: (A) Positions in state government exempt from the classified service and responsible for a total service area which require incumbents to plan, organize, implement, and control major programs within broad policy guidelines established by the governor. (B) Positions in state government including those in the classified service which require incumbents to plan, organize, implement, and control a major function or program with a service area and within broad policies and objectives established by the service area manager. (C) Positions in state government including those in the classified service which require incumbents to plan, organize, and direct a primary activity (either service or support) in a major function or program, to achieve established goals and objectives; or to provide staff support in an administrative function. (D) Positions in state government including those in the classified service which require incumbents to supervise an activity or activities (either service or support) in a specific function or program to achieve specific objectives; or to provide staff support in an administrative function." Sec. 902(13).

C. Criteria: "In certifying an appropriate collective bargaining unit the board shall take into consideration but not limited to the following criteria: (1) The authority of governmental officials at the unit level to take positive action on matters subject to negotiation. (2) The appropriateness of the proposed unit to represent all employees within the unit having regard for the similarity or divergence of their interests, needs, and general conditions of employment. The board may, in its discretion require that a separate vote be taken among any particular class or type of employees within a proposed unit to determine specifically if the class or type wishes to be included. (3) Whether over-fragmentation of units among state employees will result from certification to a degree which is likely to produce an adverse effect either on effective representation of state employees generally, or upon the effective operation of state government." Sec. 941(f).

Also, Section 927(b) mentions that "in determining whether a unit is appropriate...the extent to which the employees have organized is not controlling."

2. Municipal Employee Relations Act (MERA)

A. Appropriate Unit: A petition may be filed with the state labor relations board allegining that not less than 30 percent of the employees wish to form a bargaining unit, or that not less than 51 percent of the employees now included in an approved bargaining unit wish to form a separate bargaining unit under board criteria, or that the presently certified bargaining unit is no longer appropriate under board criteria. Sec. 1724(a).

Thereafter, "The board, a member thereof, or a person or persons designated by the board shall investigate the petition, and "(1) if it finds reasonable cause to believe that a question of unit determination or representation exists, an appropriate hearing shall be scheduled before the board upon due notice ...Hearing procedure and notification of the results thereof shall be in accordance with rules prescribed by the board, or

"(2) dismiss the petition, based upon the absence of substantive evidence.

"(c) In determining whether a question of representation exists, the board shall take into consideration the following criteria:

"(1) The similarity or divergence of the interests, needs, and general conditions of employment of all employees within the proposed bargaining unit. The board may, in its discretion, require that a separate vote be taken among any particular class or type of employee within a proposed unit to determine specifically if the class or type wishes to be included. No bargaining unit shall include both professional employees and other municipal employees unless a majority of such professional employees vote for inclusion in such unit.

"(2) Whether overfragmentation of units will result from certification to a degree which is likely to produce an adverse effect on the effective representation of other employees of the municipal employer or upon the effective

operation of the municipal employer

"(3) In determining whether a unit is appropriate the extent to which the employees have organized is not controlling." Sec. 1724(b)(c).

The statute defines "bargaining unit" as "a group of employees recognized by the municipal employer or certified by the board as appropriate for exclusive representation by an employee organization for purposes of collective bargaining." Sec. 1722(3).

It should be noted that Section 1723 of the statute permits a municipal employer's voluntary recognition of an employee organization as the exclusive bargaining agent of a unit that is appropriate under the criteria set forth in Section 1724(c) above.

B. Employees Excluded: The definition of "municipal employee" excludes

"(A) elected officials, board and commission members and executive officers;

(B) individuals employed as supervisors...;

(C) individuals who have been employed on a probationary, provisional or other nonpermanent status, or on a temporary, seasonal, on call or part-time basis. 'Part-time' means 20 hours per week or less. 'Seasonal' means fewer than 100 working days in any calendar year;

(D) confidential employees...;

(E) certified employees of school districts." Sec. 1722(12).

"Confidential employee" is defined as "an employee whose responsibility or knowledge or access to information relating to collective bargaining, personnel administration, or budgetary matters would make membership in or representation by an employee organization incompatible with his official duties." Sec. 1722(6).

C. Criteria: See A above.

D. Separate Units

1. Professional: See A above.

3. Labor Relations Act for Teachers (LRAT)

A. Appropriate Unit: Section 1991 merely mentions recognition by a school board of an exclusive representative of the teachers or of the administrators in a school district.

D. Separate Units

2. Supervisory: See D3 below.

3. School Administrators: "Principals, assistant principals, and administrators other than superintendent and assistant superintendent shall

have the right to or not to join, assist, or participate in any administrators' organization or as a separate unit of any teachers' organization of their choosing." Sec. 1982(b).

"Administrator" is defined as "any person so certified by the state board of education the majority of whose employed time in a school or a school district is devoted to serving as superintendent, assistant superintendent, assistant to the superintendent, supervisor, principal, assistant principal." Sec. 1981(1).

WASHINGTON

1 Public Employees Collective Bargaining Act (PECBA)

A. Appropriate Unit: Determined by the department of labor and industries in each application for certification. Sec. 41.56.060.

B. Employees Excluded: The definition of "public employee" excludes "any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer." Sec. 41.56.030(2).

C. Criteria: "In determining, modifying, or combining the bargaining unit, the department shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees." Sec. 41.56.060.

2 Educational Employment Relations Act (EERA)

A. Appropriate Unit: The Education Employment Relations Commission is authorized to "determine the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the commission shall consider the duties, skills and working conditions of the educational employees; the history of collective bargaining; the extent of organization among educational employees; and the desire of the educational employees; except that:

(1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and nonsupervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies; and

(7) Notwithstanding the definition of collective bargaining a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts." Sec. 9.

"Nonsupervisory employee" is defined as "all educational employees other than principals, assistant principals and supervisors." Sec. 3(8).

B. Employees Excluded: By definition "educational employee" excludes: "(a) The chief executive officer of the employer. (b) The chief administrative officers of the employer, which shall mean the superintendent of the district, deputy superintendents, administrative assistants to the superintendent, assistant superintendents, and business manager. Title variation from all positions enumerated in this subsection (b) may be appealed to the commission for determination of inclusion in, or exclusion from, the term 'educational employee'." Sec. 3(b).

C. Criteria: See A above.

D. Separate Units

2. Supervisory: See A above.

3. School Administrators: See A above.

7. Other (Employees in vocational-technical institutes or occupational skill centers): See A above.

3. Community college academic employees law

A. Appropriate Unit: Section 28B.52.030 only mentions that the employee organization selected by a majority represents the academic employees within a community college district.

"Academic employee" is defined as "any teacher, counselor, librarian, or department head, who is employed by any community college district, with the exception of the chief administrative officer of, and any administrator in, each community college district." Sec. 28B.52.020

B. Employees Excluded: The definition of "academic employee" excludes the chief administrative officer of and administrators in each community college district. Sec. 28B.52.020.

Section 28B.52.020 stipulates: "Administrators shall not be members of the bargaining unit unless a majority of such administrators and a majority of the bargaining unit elect by secret ballot for such inclusion..."

"Administrator" is defined as "any person employed either full or part time by the community college district and who performs administrative functions as at least 50 percent or more of his assignments, and has responsibilities to hire, dismiss, or discipline other employees." Sec. 28B.52.020

4. State university system classified employees law

A. Appropriate Unit: Determined by the higher education personnel board.

The statute requires the board to adopt and promulgate rules and regulations, consistent with the best standards of personnel administration, "regarding the basis for, and procedures to be followed for ... determination of appropriate bargaining units within any institution or related boards: *Provided*, That in making such determination the board shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees..." Sec. 28B.16.100(1)

C. Criteria: See A above.

WISCONSIN

1. State Employment Labor Relations Act (SELRA)

A. Appropriate Unit: The law establishes single statewide units of 14 occupational groups: "1. Clerical and related; 2. Blue collar and nonbuilding trades;

3. Building trades crafts; 4. Security and public safety; 5. Technical; 6. Professional. a. Fiscal and staff services; b. Research, statistics, and analysis; c. Legal; d. Patient treatment; e. Patient care; f. Social services; g. Education; h. Engineering; i. Science." The employment relations commission is authorized to assign eligible employees to the appropriate statutory bargaining units. Sec. 111.81(3)(a) and (b).

"(d) Although supervisory personnel are not considered employes for purposes of this subchapter, the commission may consider petitions for a statewide unit of professional supervisory employes and a statewide unit of nonprofessional supervisory employes, but the certified representatives may not be affiliated with labor organizations representing employes assigned to the statutory units set forth in Sec. 111.81(3)(a). The certified representatives for supervisory personnel may not bargain on any matter other than wages and fringe benefits as defined in Sec. 111.91(1)." Sec. 111.81(3).

Furthermore, in a rather unique provision the statute provides: "Whenever the commission decides to permit the employes to determine for themselves whether they desire to establish themselves as a collective bargaining unit, such determination shall be conducted by secret ballot. In such instances, the commission shall cause the balloting to be conducted so as to show separately the wishes of the employes in the voting group involved as to the determination of the collective bargaining unit." Sec. 111.83(2).

B. Employees Excluded: The definition of "employe" excludes "limited term employes, sessional employes, employes who are performing in a supervisory capacity, management employes, and individuals privy to confidential matters affecting the employer-employe relationship, as well as all employes of the commission." Sec. 111.81(15).

"Management" means "those personnel engaged predominately in executive and managerial functions, including such officials as division administrators, bureau directors, institutional heads and employes exercising similar functions and responsibilities as determined by the commission." Sec. 111.81(20).

C. Criteria: See A above.

D. Separate Units

1. Professional: See A above.

"Professional employe" is defined as: "(a) Any employe engaged in work: 1. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; 2. Involving the consistent exercise of discretion and judgment in its performance; 3. Of such a character that the output produced or the

result accomplished cannot be standardized in relation to a given period of time; 4. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes; or

(b) Any employe, who: 1. Has completed the courses of specialized intellectual instruction and study described in par. (a) 4; and 2. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in par. (a)." Sec. 111.81(11).

2. Supervisory: See A above.

"Supervisor" means "any individual whose principal work is different from that of his subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline employes, or to adjust their grievances, or to authoritatively recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 111.81(19).

7. Other (Craft employees; security and public safety employees; etc.): See A above.

E. Other Limitations

2. Supervisory: The certified representative of a statewide supervisory unit may not be affiliated with labor organizations representing employees assigned to the 15 statutory units. See A above.

2. Municipal Employment Relations Act (MERA)

A. Appropriate Unit: The employment relations commission "shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." Sec. 111.70(4)(d)2.

B. Employees Excluded: "Municipal employee" is defined as "any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employee." Sec. 111.70(1)(b).

In addition the law provides that "Nothing in this subchapter shall preclude law enforcement and firefighting supervisors from organizing separate

units of supervisors for purposes of negotiating with their municipal employers. The commission shall by rule establish procedures for certification of such units of supervisors and the levels of supervisors to be included. The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employes but such requirement shall not prevent affiliation by a supervisory representative with the same parent state or national organization as the employe representative. Sec. 111.70(3)(d).

"Supervisor" means "1. As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

"2. As to firefighters employed by municipalities with more than one fire station, the term 'supervisor' shall include all officers above the rank of the highest ranking officer at each single station. In municipalities, where there is but one fire station, the term 'supervisor' shall include only the chief and the officer in rank immediately below the chief. No other firefighter shall be included under the term 'supervisor' for the purposes of this subchapter." Sec. 111.70(1)(o).

C. Criteria: In determining the appropriate unit, the commission "may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employes concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employes and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employes unless a majority of the craft employes vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot." Sec. 111.70(4)(d)2.

D. Separate Units

1. Professional: See C above.

"Professional employee" is defined as: "1. Any employee engaged in work: a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; b. Involving the consistent judgment in its performance; c. Of such a

character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or

"2. Any employee who: a. Has completed the courses of specialized intellectual instruction and study described in subd. 1 d; b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subd. 1." Sec. 111.70(1)(1).

2. Supervisory (law enforcement or firefighting supervisors): See B above.

7. Other (Craft employees): See C above.

"Craft employee" is defined as "a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employees not in direct line of progression in the craft." Sec. 111.70(1)(f).

E. Other Limitations

2. Supervisory: The statute permits law enforcement or firefighting supervisors to organize separate units for purposes of negotiation, but "The commission may require that the representative in a supervisory unit shall be an organization that is a separate local entity from the representative of the employes but such requirement shall not prevent affiliation by a supervisory representative with the same parent state or national organization as the employee representative." Sec. 111.70(3)(d).

In addition, a special provision states: "Supervisors may remain members of the same labor organization of which their subordinates are members, but such supervisor shall not participate in determinations of the collective bargaining policies of such labor organization or resolution of grievances of employes. After January 1, 1974, said supervisors shall not remain members of such organizations." Sec. 111.70(3)(a)2.

WYOMING

1. **Firefighters law**

A. Appropriate Unit: The statute simply mentions that the organization selected by the majority shall be recognized as the sole and exclusive bargaining agent for all members of the department. Sec. 27-267.

DISTRICT OF COLUMBIA

1. District Personnel Manual, Chapter 25A

A. Appropriate Unit: "In undisputed cases, the determination of appropriate units shall be made by the Personnel Officer, D.C. In cases where the parties are unable to reach an agreement as to the appropriate unit of where the Personnel Officer, D.C. objects to the agreed to unit, the dispute shall be referred to the Board of Labor Relations. . ." Sec. 8 c.

"Appropriate unit" is defined as "a group of employees recognized for representation by a labor organization." Sec. 3 b.

B. Employees Excluded: Management executives, confidential employees, supervisors or any employee engaged in personnel work in other than a purely clerical capacity are excluded from employee units. Sec. 8 b.

"Management executive" means "an employee who makes or recommends management policies or who directs or controls significant District Government operations." Sec. 3 p.

"Confidential employee" means "An employee who, in the regular course of his duties, has access to or possesses information relating to his employer's labor relations policy." Sec. 3 f.

"Supervisor" means "an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to evaluate their performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Sec. 3 x.

C. Criteria: "No particular type of unit may be predetermined by management officials nor can there be any arbitrary limit upon the number of appropriate units within an agency or division. The essential ingredient in every unit is community of interest; however, an appropriate unit must also be one that promotes effective labor relations and efficiency of agency operations. A unit should include individuals who share certain interests, such as skills, working conditions, common supervision, physical location, organizational structure, distinctiveness of functions performed, and the existence of integrated work processes.

"No unit shall be established solely on the basis of the extent to which employees in a proposed unit have organized. However, membership in a labor organization may be considered as one factor in evaluating the community of interest of employees in a proposed unit." Sec. 8 a.

D. Separate Units

1. Professional: "A unit for exclusive recognition shall not contain both professional employees and non-professional employees unless a majority of such professional employees vote or petition for inclusion in such unit." Sec. 8 b.

"Professional employee" is defined as: "(1) any employee engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; involving the consistent exercise of discretion and judgment in its performance; of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (2) any employee, who has completed the courses of specialized intellectual instruction and study described above and is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined above." Sec. 3 u.

III. APPENDICES

Table A.
Statutes, Ordinances and Personnel Rules and Regulations Related to Labor-Management Relations in the Public Sector Adopted through July 1976

State	Statute	*Employees Covered*					
		State	Local Govt.	Fire-fighters	Police	Teachers	Other
Alabama 1	*The Code of Alabama Recompiled*, Title 37, Art. 7, Sec. 450(3) (1967).			x			
Alaska 1	*Alaska Statutes*, Title 23, Secs. 23.40.70–23.40.260 (1972), as am. [Public Employment Relations Act].	x	x	x	x		
Alaska 2	*Alaska Statutes*, Title 14, Secs. 14.20.550–14.20.610 (1970), as am.					x	School administrators
Arizona							
Arkansas							
California 1	*Annotated California Codes, Government*, Secs. 3500–3510, Title 1, Div. 4, Ch. 10 (1961), as am. [Meyers-Milias-Brown Act].		x	x	x		
California 2	*Annotated California Codes, Government*, Secs. 3525–3536, Title 1, Div. 4, Ch. 10.5 (1971), as am.	x		x	x		
California 3	*Annotated California Codes, Government*, Secs. 3540–3549.3, Div. 4, Ch. 10.7 (1975) [Public Educational Employer-Employee Relations Act].					x	Classified public school employees, community college system, school administrators
California 4	*Annotated California Codes, Labor*, Secs. 1960–1963, Div. 2, Pt. 7, Ch. 4 (1959).			x			
California 5	*Los Angeles Administrative Code*, Ch. 8, Div. 4, Ordinance No. 141, 527 (1971).		x				
California 6	Employee Relations Ordinance of the County of Los Angeles (1968), as am.		x				

California 7	*San Francisco Administrative Code*, Art. XIA, Ch. 16 (1973) [Employee Relations Ordinance of the City and County of San Francisco].		x				
Colorado							
Connecticut 1	*Connecticut General Statutes Annotated*, Title 7, Ch. 113, Secs. 7-467–7-478 (1965), as last am. by P.A. 75-189, P.A. 75-570 (*Conn. Legislative Service, 1975)* [Municipal Employee Relations Act].		x	x	x		
Connecticut 2	*Connecticut General Statutes Annotated*, Title 10, Ch. 166, Secs. 10-153a–10-153h (1961), as. am. [Teachers Negotiations Act].					x	School administrators
Connecticut 3	*Connecticut Legislative Service 1975*, P.A. 75-566, Secs. 1-11 (1975) [Pending codification].	x			x		University-college system; state vocational schools
Delaware 1	*Delaware Code Annotated*, Title 19, Ch. 13, Secs. 1301–1312 (1965).	x	x	x	x		
Delaware 2	*Delaware Code Annotated*, Title 14, Ch. 40, Secs. 4001–4013 (1969).					x	
Dist. of Col.	*District Personnel Manual*, Ch. 25A (1970), as am.		x	x	x		
Florida 1	*Florida Statutes Annotated*, Secs. 447.201–447.607 (1974).	x	x	x	x	x	University-college system, community college system
Georgia 1	Fire Fighter's Mediation Act, *Code of Georgia Annotated*, Title 54, Ch. 54-13, Secs. 54-1301–54-1315 (1971).			x			
Hawaii 1	*Hawaii Revised Statutes*, Ch. 89, Secs. 89-1–89-21 (1970), as am. [Public Employment Relations Act].	x	x	x	x	x	School administrators; university-college system; nurses
Idaho 1	*Idaho Code*, Secs. 44-1801–44-1811, Ch. 18 (1970).			x			
Idaho 2	*Idaho Code*, Secs. 33-1271–33-1276, Ch. 12 (1971).					x	School administrators
Illinois							
Indiana 1	*Indiana Statutes Annotated, Code Edition*, Title 20, Secs. 20-7.5-1-1–20-7.5-1-14 (1973), as am.					x	
Indiana 2	*Indiana Statutes Annotated, Code Edition*, Title 22, Secs. 22-6-4-1–22-6-4-13 (1975).	x	x				
Iowa 1	*Iowa Code Annotated*, Sec. 20, Secs. 20.1–20.27 (1974) [Public Employment Relations Act].	x	x	x	x	x	

Iowa 2	*Iowa Code Annotated*, Sec. 90, Secs. 90.15–90.27 (1959).			x			
Kansas 1	*Kansas Statutes Annotated*, Secs. 75-4321–75-4337, Ch. 75, Art. 43 (1971), as am.	x	x	x	x		
Kansas 2	*Kansas Statutes Annotated*, Secs. 72-5413–72-5425, Ch. 72, Art. 54 (1970), as am.					x	School administrators; community jr. college faculty
Kentucky 1	*Kentucky Revised Statutes*, Ch. 345, Secs. 345.010–345.130 (1972), as am. [Fire Fighters Collective Bargaining Act].			x			
Kentucky 2	*Kentucky Revised Statutes*, Ch. 78, Secs. 78.400, 78.470, 78.480 (1972).				x		
Louisiana							
Maine 1	Municipal Public Employees Labor Relations Act, *Maine Revised Statutes Annotated*, Title 26, Ch. 9-A, Secs. 961–973, (1969), as am.		x	x	x	x	School administrators
Maine 2	State Employees Labor Relations Act, *Maine Revised Statutes Annotated*, Title 26, Ch. 9-B, Secs. 979–979-O (1974), as am.	x					
Maine 3	University of Maine Labor Relations Act, *Maine Revised Statutes Annotated*, Title 26, Ch. 12, Secs. 1021–1034 (1975), as am.						University system
Maryland 1	*The Annotated Code of the Public General Laws of Maryland*, Art. 77, Sec. 160, Ch. 14½ (1969), as am.					x	School administrators
Maryland 2	*Baltimore City Code*, Art. I, Secs. 110–126a (1968), as am. [Municipal Labor Relations Ordinance].		x				
Maryland 3	*Prince George's Code of Ordinances and Resolutions*, Ch. 13-A (1973).		x				
Maryland 4	*The Annotated Code of the Public General Laws of Maryland*, Art. 77, Sec. 160A (1974), as am.						Non-certificated public school employees
Maryland 5	*Code of Public Local Laws* [Allegany County], Art. 1, Sec. 64B (1974).		x				
Mass. 1	*Massachusetts General Laws Annotated*, Ch. 150E, Secs. 1–15 (1973), as am.	x	x	x	x	x	University-college system
Michigan 1	Public Employment Relations Act, *Michigan Compiled Laws Annotated*, Secs. 423.201–423.216 (1947), as am.		x	x	x	x	School administrators
Michigan 2	*Michigan Compiled Laws Annotated*, Secs. 423.231–423.247 (1969), as am.			x	x		

Minnesota 1	Public Employment Labor Relations Act, 1971, *Minnesota Statutes Annotated,* Secs. 179.61–179.76 (1971), as am.	x	x	x	x	x	University-college system
Mississippi							
Missouri 1	*Annotated Missouri Statutes,* Secs. 105.500–105.530 (1967), as am.	x	x	x			
Montana 1	*Revised Codes of Montana,* Title 41, Secs. 41-2201–41-2210 (1969).						Nurses
Montana 2	*Revised Codes of Montana,* Title 59, Secs. 59-1601–59-1617 (1973), as am.	x	x	x	x	x	University-college system
Nebraska 1	*Revised Statutes of Nebraska 1943,* Ch. 48, Art. 8, Secs. 48-801–48-838 (1947), as am.	x	x	x	x		
Nebraska 2	Teachers' Professional Negotiation Act, *Revised Statutes of Nebraska 1943,* Ch. 79, Secs. 79-1287–79-1295 (1967).					x	
Nevada 1	Local Government Employee-Management Relations Act, *Nevada Revised Statutes,* Title 23, Ch. 288, Secs. 288.010–288.280 (1969), as am.		x	x	x	x	School administrators; state-employed nurses
N. H. 1	*New Hampshire Revised Statutes Annotated,* Ch. 273-A, Secs. 273-A:1–273-A:16 (1975).	x	x	x	x	x	University system
N. J. 1	*New Jersey Statutes Annotated,* Title 34, Ch. 13A, Secs. 34:13A-1–34:13A-13 (1941), as am. [New Jersey Employer-Employee Relations Act].	x	x	x	x	x	School administrators
N. M. 1	Regulations for Labor-Management Relations in the Classified Service (1976).	x					
New York 1	Public Employees' Fair Employment Act [Taylor Law], *Consolidated Laws of New York Annotated,* Civil Service, Art. 14, Secs. 200–214 (1967), as am.	x	x	x	x	x	University-college system
New York 2	*New York City Administrative Code,* Ch. 54 (1967), as am. [New York City Collective Bargaining Law].		x	x	x		University-college system; nurses
North Carolina							
N. Dakota 1	*North Dakota Century Code,* Title 34, Ch. 34-11, Secs. 34-11-01–34-11-05 (1951).	x	x				
N. Dakota 2	*North Dakota Century Code,* Title 15, Ch. 15-38.1, Secs. 15-38.1-01–15-38.1-15 (1969).					x	School administrators
Ohio							

Oklahoma 1	*Oklahoma Statutes Annotated,* Title 11, Secs. 548.1–548.14 (1971), as am. [Firefighters' and Policemen's Arbitration Law].		x	x	x		
Oklahoma 2	*Oklahoma Statutes Annotated,* Title 70, Secs. 509.1–509.10 (1971).					x	Nonprofessional school employees
Oregon 1	*Oregon Revised Statutes,* Ch. 243, Sec. 243.650–243.782 (1963), as am.	x	x	x	x	x	University-college system; nurses
Oregon 2	*Code of the City of Portland,* Ordinance No. 128058, Secs. 3-2202, 3-2203, 3-2208 (1968).		x				
Oregon 3	*Eugene Code, 1971,* Secs. 2.875–2.876 (1971).		x	x	x		
Pa. 1	Public Employe Relations Act, *Pennsylvania Statutes Annotated,* Title 43, Secs. 1101.01–1101.2301 (1970), as am.	x	x			x	
Pa. 2	*Pennsylvania Statutes Annotated,* Title 43, Secs. 217.1–217.10 (1968).			x	x		
Pa. 3	*Pennsylvania Statutes Annotated,* Title 53, Sec. 39951, Art. IV (a–e) (1967).						Municipal transit employees
Rhode Is. 1	*General Laws of Rhode Island 1956,* Secs. 36-11-1–36-11-11, Title 36, Ch. 11 (1958), as am.	x					State police below rank of lieutenant
Rhode Is. 2	Municipal Employees' Arbitration Act, *General Laws of Rhode Island 1956,* Secs. 28-9.4-1–28-9.4-19, Title 28, Ch. 9.4 (1967).		x				
Rhode Is. 3	School Teachers' Arbitration Act, *General Laws of Rhode Island 1956,* Secs. 28-9.3-1–28-9.3-16, Title 28, Ch. 9.3 (1966) as am.					x	
Rhode Is. 4	Fire Fighters' Arbitration Act, *General Laws of Rhode Island 1956,* Secs. 28-9.1-1–28-9.1-15, Title 28, Ch. 9.1 (1961), as am.			x			
Rhode Is. 5	Policemen's Arbitration Act, *General Laws of Rhode Island 1956,* Secs. 28-9.2-1–28-9.2-15, Title 28, Ch. 9.2 (1963), as am.				x		Police chief
Rhode Is. 6	*General Laws of Rhode Island 1956,* Secs. 28-9.5-1–28-9.5-13, Title 28, Ch. 9.5 (1976).						School administrators, city of Providence
S. Carolina 1	State Employee Grievance Procedure Act, *Code of Laws of South Carolina 196* , Title 1, Secs. 1-49.11–1-49.14, Art. 4.1 (1971).	x					
S. Dakota 1	*South Dakota Compiled Laws 1967,* Title 3, Ch. 3-18, Secs. 3-18-1–3-18-17 (1969), as am.	x	x			x	School administrators
Tennessee							
Texas 1	The Fire and Police Employee Relations Act, *Texas Civil Statutes,* Art. 5154c-1, Title 83, Secs. 1–20 (1973).			x	x		

Texas 2	*Texas Civil Statutes,* Art. 5154c, Title 83, Secs. 1–7 (1947).	x	x				
Utah 1	*Utah Code Annotated,* Title 34, Ch. 20a, Secs. 34-20a-1–34-20a-9 (1975) [Utah Fire Fighters' Negotiation Act].			x			
Vermont 1	State Employee Labor Relations Act, *Vermont Statutes Annotated,* Title 3, Secs. 901–1007, Ch. 27 (1969), as am.	x					Uniformed state police in dept. of public safety; state college employees
Vermont 2	Municipal Employee Relations Act, *Vermont Statutes Annotated,* Title 21, Secs. 1721–1735, Ch. 22 (1973), as am.		x	x	x		
Vermont 3	*Vermont Statutes Annotated,* Title 16, Secs. 1981–2010, Ch. 27 (1969) [Labor Relations Act for Teachers].					x	School administrators
Virginia							
Washington 1	*Revised Code of Washington, Annotated,* Title 41, Ch. 41.56, Secs. 41.56.010–41.56.950 (1967), as am. [Public Employees Collective Bargaining Act].		x	x	x		
Washington 2	Educational Employment Relations Act, *Washington Legislative Service 1975,* Ch. 288, Secs. 1–20, 23, 25 (1975) [Pending Codification in Title 41 RCW].					x	School administrators
Washington 3	*Revised Code of Washington Annotated,* Title 28B, Ch. 28B.52, Secs. 28B.52.010–28B.52.200 (1971), as am.						Community college academic employees
Washington 4	*Revised Code of Washington Annotated,* Title 28B, Sec. 28B.16.100 (1969), as am.						State university system classified employees
Washington 5	*Revised Code of Washington Annotated,* Title 53, Ch. 53.18, Secs. 53.18.010–53.18.060 (1967), as am.						Port district employees
Washington 6	*Washington Legislative Service 1975,* Ch. 296, Secs. 1–11 (1975), as am. [Pending Codification].		x	x	x		Community college academic employees
West Virginia							
Wisconsin 1	State Employment Labor Relations Act, *Wisconsin Statutes Annotated,* Secs. 111.80–111.97 (1967), as am.	x					
Wisconsin 2	Municipal Employment Relations Act, *Wisconsin Statutes Annotated,* Secs. 111.70, 111.71 (1959), as am.		x	x	x	x	
Wisconsin 3	*Wisconsin Statutes Annotated,* Sec. 111.77 (1971), as am.			x	x		
Wyoming 1	*Wyoming Statutes 1957,* Title 27, Secs. 27-265–27-273, Ch. 14 (1965).			x			

Table 1.

Unit Determination Criteria, State and Local Laws, July 1976

Statute	Community of Interest	Similar Working Conditions	Desire of Employees	Prin. of Efficient Adm. of Govt.	History of Collective Barg.	Effects of Over-fragmentation	Similar Skills	Geographical Location	Extent of Organization	Similar Job Duties	Other Criteria
State and/or local government employees											
Alaska 1	x	x	x		x	x					Wages; hours.
California 5	x	x		x			x			x	Educational requirements; history of representation; effects on city classification structure of dividing a single classification among two or more units; sound employee relations.
California 6	x			x							Freedom in exercise of employee rights; history of employee relations; sound employee relations; management level of authority; effect on the existing classification structure of dividing a single classification among two or more units.
California 7		x	x		x		x				Wages; hours.
Connecticut 1	x										
Connecticut 3	x					x					
Delaware 1		x	x		x		x		x	x	
Florida 1	x[6]		x	x	x						The number of employee organizations with which the employer might have to negotiate; the compability of the unit with the joint responsibilities of the public employer and public employees to represent the public; the power of the officials of government at the level of the unit to agree or make effective recommendations to other administrative authority or legislative body with respect to matters of employment upon which the employee desires to negotiate; the organizational structure of the public employer; the statutory authority of the public employer

											to administer a classification and pay plan; such other factors and policies as the commission may prescribe by regulations or by its decisions.
Indiana 2	x	x	x		x			x	x[1]		Wages; hours.
Iowa 1	x			x				x	x[1]		Recommendations of the parties involved.
Kansas 1	x			x		x		x	x[1]		Recommendations of parties involved.
Maine 1	x										The unit appropriate for purposes of collective bargaining shall be the public employer unit or any subdivision thereof.
Maine 2	x					x					
Maryland 2	x	x					x	x		x	Common supervision; wages; educational requirements; hours; compatibility of the unit with joint responsibilities of the employer and employees to serve the public.
Maryland 3	x		x	x	x	x					Effectiveness and efficiency of labor-management relations affected by the unit.
Massachusetts 1	x			x[2]							Stable and continuing labor relations; safeguarding rights of employees to effective representation.
Minnesota 1			x[4]					x	x[1,4]		Administrative and supervisory levels of authority; recommendations of the parties; principles and coverage of uniform comprehensive position classification and compensation plans; involvement of professions and skilled crafts and other occupational classifications.
Missouri 1	x										
Montana 2	x	x	x		x						Wages; hours; fringe benefits; common personnel policies; extent of integration of work functions and interchange among employees affected.
Nebraska 1											Established bargaining units; established employer policies.
Nevada 1	x										
New Hampshire 1	x[3]										
New Jersey 1	x										
New Mexico 1	x		x[7]			x					The administrative structure of the agency; effect of the unit on the efficient operation of the unit.
New York 1	x										Administrative level of authority; compatibility of the unit with the joint responsibilities of the employer and employees to serve the public.
New York 2				x							Sound labor relations.
Oklahoma 1	x	x	x		x						Wages; hours.

Oregon 1	x	x	x		x						Wages; hours.
Oregon 2	x				x		x	x		x	Common supervision; compensation; educational requirements.
Pennsylvania 1	x					x					
South Dakota 1				x				x	x[1]		Administrative and supervisory levels of authority; occupational classification; recommendations of the parties; principles and coverage of uniform comprehensive position classification and compensation plans.
Vermont 1	x	x				x					Administrative level of authority.
Vermont 2	x	x				x					
Washington 1		x	x		x		x		x	x	
Wisconsin 1						x					
Wisconsin 2						x					
Dist. of Col. 1	x	x		x			x	x			Effective labor relations; common supervision; organizational structure; distinctiveness of functions performed; existence of integrated work processes.
Teachers											
California 3	x										Established practices including, among other things, extent to which employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.
Indiana 1	x					x					Efficient administration of school operations; recommendations of the parties involved.
Kansas 2	x								x		
North Dakota 2	x										Common problems; common employer; history of common representation.
Washington 2		x	x		x		x		x	x	
Policemen or firefighters											
Kentucky 1	x	x	x		x						Wages; hours.
Others											
Maine 3	x										
Montana 1		x								x	Similar licensure.
Washington 4		x	x		x		x		x	x	

[1]The term used here is "history and extent of organization."

[2]The term used here is "efficiency of operations and effective dealings."

[3]The community of interest may be exhibited by one or more of the following criteria, although it is not limited to such; a) Employees with the same conditions of employment; b) Employees with a history of workable and acceptable collective negotiations; c) Employees in the same historic craft or profession; d) Employees functioning within the same organizational unit. In no case shall the board certify a bargaining unit of less than 10 employees with the same community of interest.

[4]Among the listed criteria, the statute places particular importance upon the history and extent of organization and the desires of the petitioning employee representatives.

[5]This is cited as the key criteria in determining the most appropriate unit.

[6]Community of interest includes considering the following: (1) The manner in which wages and other terms of employment are determined; (2) The method by which jobs and salary classifications are determined; (3) Inter-dependence of jobs and interchange of employees.

[7]The term used here is "the desires of the employees and the agency."

Table 2.

Employees Excluded from Coverage of Law, State and Local Laws, July 1976

Statute	Elected officials	Confidential employees	Managerial employees	Appointed officials	Supervisory employees	Board & Comm. members	Part-time employees	Department heads	Administrative officials	Others
State and/or local government employees										
Alaska 1	x			x						Teachers; non-certificated employees of school districts.
California 1	x			x						Teachers.
California 2	x			x						
California 7										Police; firefighters.
Connecticut 1	x	x				x	x		x	Certified teachers.
Connecticut 3	x	x		x		x	x			
Delaware 1	x	x	x	x						Certified professional employees of the public school system.
Florida 1	x	x	x	x		x				Agency heads; those persons holding positions by appointment or employment in the organized militia; those individuals acting as negotiating representatives for employer authorities; those persons holding positions of employment with the Florida legislature; those persons who have been convicted of a crime and are inmates confined to institutions within the state.
Hawaii 1	x	x	x	x		x	x	x	x	Agency heads; department or agency deputy heads and first assistants; temporary employees; employees of the executive offices of the governor, lieutenant governor and mayor; household employees at the governor's residence; staff of the legislative branch of the State and counties; any inmate, *kokua*, patient, ward or student of a state institution; student help; National Guard.
Indiana 2	x	x		x						Any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action; policemen, firemen, professional engineers, faculty

Iowa 1	x	x		x	x	x			members of any university or certificated employees of school corporations or municipal or county health care institution employees. Representatives of a public employer, including the administrative officer, director, or chief executive officer of a public employer or major division thereof as well as his deputy, first assistant; students working as part-time public employees 20 hours per week or less, except graduate or other post-graduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant; temporary public employees employed for a period of five months or less; commissioned and enlisted personnel of the Iowa national guard; judges of the supreme court, district judges, district associate judges and judicial magistrates, and the employees of such judges and courts; patients and inmates employed, sentenced, or committed to any state or local institution; persons employed by the state department of justice; persons employed by the commission for the blind.
Kansas 1	x	x	x		x				Professional employees of school districts.
Maine 1	x	2		x			x	x	Division head; superintendent or assistant superintendent of a school system; person who has been employed for less than six months; person on a probationary or provisional status, or who is a temporary, seasonal, on-call employee.
Maine 2	x	3		x	4			x	Division head; person who has been employed less than six months or who is a temporary, seasonal, or on-call employee; a member of the state militia or national guard.
Maryland 2							x		Public school employees; policemen; firefighters; court employees; seasonal employees; probationary employees; provisional employees; temporary employees; personnel workers other than clerical.
Maryland 3	x	x	x	x					
Massachusetts 1	x	x	x	x		x			Representatives of any public employer, including the heads, directors and executive and administrative officers of departments and agencies of any public employer; members of the militia or national guard and employees of the Massachusetts Labor Relations Commission; officers and employees within the departments of

Michigan 1			1	1						the state secretary, state treasurer, state auditor and attorney general.
Minnesota 1	x							x		Election officers; National Guard; emergency employees; temporary employees; seasonal employees; school superintendent; assistant school superintendent; employees of charitable hospitals.
Missouri 1										Policemen; deputy sheriffs; State Highway Patrolmen; National Guard; teachers; college and university faculty.
Montana 2	x			x	x	x	x			School district clerks and school administrators, registered professional nurses performing service for health care facilities, professional engineers and engineers in training, and includes any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action.
Nebraska 1										National Guard or state militia.
Nevada 1			x							
New Hampshire 1	x		x		x					Persons in a probationary or temporary status, or employed seasonally, irregularly, or on-call.
New Jersey 1	x			x			x		x	Deputy department heads; agency heads; deputy agency heads; school superintendent or other chief administrator of the district.
New Mexico 1			x			x				Individuals in temporary, temporary part-time or seasonal status.
New York 1			x	x						Organized state militia; persons appointed or employed in the service of the PERB.
New York 2			x	x						
Oklahoma 1	x		x			x				Police chief and his administrative assistant; fire department chief and his administrative assistant; legislative employees; judicial employees.
Oregon 1	x		x			x	x			
Oregon 2						x				Employees in the city auditor's office whose assignment includes custody of, or control over confidential information on city employees; employees on a nonpay status on the regular city payroll; personnel in the offices of the mayor (including the budget and employee relations offices), city commissioners, city attorney and civil service board.
Oregon 3			x			x				

Pennsylvania 1	x	x	x	x						Clergymen or other persons in a religious profession; employes or personnel at church offices or facilities; policemen; firemen.
Rhode Island 2	x				x	x	x		x	Certified teachers; policemen; firefighters.
Vermont 1	[The exclusions here are extensive and quite specific. See the Legal Provision Finder under Vermont.]									
Vermont 2	x	x			x	x	x			Executive officers; probationary employees; provisional employees; temporary employees; seasonal employees; on-call employees; certified employees of school districts.
Washington 1	x	x		x						
Wisconsin 1		x	x		5					Limited term employes, seasonal employes, employes of the Wisconsin Employment Relations Commission.
Wisconsin 2		x	x		6					Independent contractors, executive employees.
Dist. of Col. 1		x	x		x					Personnel workers other than clerical.
Teachers										
Alaska 2										School superintendents
California 3	x	x	x	x						
Connecticut 2										Superintendent of schools, assistant superintendents, certified professional employees who act for the board of education in negotiations with certified professional personnel or are directly responsible to the board of education for personnel relations or budget preparation, temporary substitutes and all non-certified employees of the board of education.
Delaware 2					x					Staff personnel.
Idaho 2										[See Legal Provision Finder, Idaho teachers law, B.]
Indiana 1		x			x[1]					Employees performing security work; non-certificated employees.
Maryland 1										School superintendent; employer negotiators.
Rhode Island 3										Superintendents; assistant superintendents; principals; assistant principals.
Washington 2										Chief executive officer of the employer, the chief administrative officers of the employer, including district superintendent, deputy superintendents, administrative assistants to superintendent, assistant superintendents, and business manager.
Policemen and/or firefighters										
Texas 1										Police and fire department chiefs.
Utah 1										Fire chief, assistant chief, battalion or deputy chief, captain or lieutenant.

Others										
Maine 3		7		x						Persons appointed by the Board of Trustees as a vice-president, dean, director or member of the chancellor's immediate staff; persons employed in initial six months of employment.
Maryland 4		x	x							Persons designated by the public school employer to act in a negotiating capacity.
Montana 1										Member of a religious order assigned to a health care facility as part of her obligation to the order.
Rhode Island 6										Superintendents and assistant superintendents.
Washington 3										Chief administrative officer of and administrators[8] in each community college district.

[1]The statute stipulates that "supervisors shall include, but not be limited to superintendents, assistant superintendents, business managers and supervisors, or directors with school corporation-wide responsibilities, principals and vice-principals or department heads who have responsibility for evaluating teachers." Sec. 20-7.5-1-2(h).

[2]The law excludes persons "whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head, body, department head or division head."

[3]The law excludes persons "whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the Governor, a department head or body having appointive power within the executive department."

[4]The law appears to exclude supervisory employees under Sec. 979-E1, which provides that the executive director shall consider enumerated criteria "in determining whether a supervisory position should be excluded from the proposed bargaining unit."

[5]Although under the law supervisory personnel are not considered employees, WERC is authorized to consider petitions for a statewide unit of professional supervisory employees and a statewide unit of nonprofessional employees.

[6]Although under the law supervisors are not considered employees, law enforcement and firefighting supervisors are permitted to organize separate units of supervisors for purposes of negotiating.

[7]The law excludes persons "whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the university."

[8]Administrators may be included in the academic employees bargaining unit provided that a majority of such administrators and a majority of the bargaining unit so elect by secret ballot.

Table 3.
Separate Units Prescribed (or Permitted), State and Local Laws, July 1976

Statute	Professional	Supervisor	School Administrators	Policemen	Guards	Firefighters	Others
State and/or local government employees							
California 1	(x)						
California 2	(x)						
California 5	(x)						Management employees; confidential employees.
California 6	x[1]	x[4]					Management employees; confidential employees.
*California 7	x	x					Craft employees; non-professional hospital employees; courtroom, security and detention personnel.
Connecticut 1	x[1]			x		x	
Connecticut 3	x[1]						University of Connecticut, state colleges, community colleges, state technical colleges, state vocational schools, university and community college non-faculty professional personnel.
Florida 1	x[5]						
*Hawaii 1	x	x	x	x		x	University-community college system faculty; university-community college system personnel; nurses; nonprofessional hospital workers; scientific employees.
Indiana 2		x					
Iowa 1	x[5]						
Kansas 1				(x)[2]		(x)[2]	
Maine 1	x[1]	(x)					
Maryland 2	x[1]	x					
Maryland 3	x[1]	(x)					
Massachusetts 1	x[1]			x			
Minnesota 1							"Essential employees."

Nebraska 1				(x)		(x)	
Nevada 1		x	x				Department heads; administrative employees.
New Hampshire 1	x[5]	x					
New Jersey 1	x[1]	x					Craft employees.
New Mexico 1					(x)		
New York 2	x[1]	(x)					
Oregon 3	x[1]						
Pennsylvania 1	x[1]	x			x		Necessary court employees.
Vermont 2	x[1]						
*Wisconsin 1	x	x					Craft employees; security and public safety employees.
Wisconsin 2	x[1]	(x)[3]					Craft employees.
Dist. of Col. 1	x[1]						
Teachers							
Alaska 2			(x)				
California 3		x					Classified employees and certificated employees.
Connecticut 2			x				
Kansas 2			x				
N. Dakota 2			x				
Oklahoma 2							Nonprofessional educator employees.
Vermont 3			(x)				
Washington 2		x[6]	x[6]				Vocational-technical institute employees, occupational skill center employees.
Nurses							
Montana 1	x[1]						
Policemen and firefighters							
Texas 1				x		x	
Public school employees							
Maryland 4		x					

University college system							
•Maine 3	x	x		x			Faculty, administrative staff, clerical, office, laboratory and technical, service and maintenance.

•These statutes have established a fixed number of separate units. See Legal Provision Finder for details.

[1]No unit shall include both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in such unit.

[2]However, employees of a city public safety department with both police and fire protection duties shall be considered an appropriate unit.

[3]Only law enforcement or firefighting supervisors are permitted to organize separate units of supervisors.

[4]See Legal Provision Finder, Los Angeles County ERO, D2.

[5]No unit shall include both professional and nonprofessional employees, unless a majority of each group vote for inclusion in such unit.

[6]See Legal Provision Finder, Washington Educational Employment Relations Act.

PUBLICATIONS

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